

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1250 of 2017 (O&M)

Date of decision: 07.03.2017

Inderjit Singh

... Petitioner

versus

Baij Nath and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Sandeep Jain, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The petitioner is in revision against the order dated 25.10.2016 passed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949, being tenant aggrieved against the findings recorded by the authorities below, whereby the Rent Controller, Nawanshahr, vide order dated 27.02.2015 has ordered vacation on the ground of subletting. The said order has been upheld on 25.10.2016 by the Appellate Authority.

The pleaded case of respondent No.1/Baij Nath was that he was the owner of the shop in question. He along with his brothers Manohar Lal and Ravinder Kumar had inducted Santokh Singh, father of the present petitioner as tenant at the rate of Rs. 30 per month more than 25 years ago for a year less a day and after that he had become the statutory tenant. On his death, the present petitioner along with respondent Nos. 2 to 7 who are the legal heirs had continued in the

premises having inherited the tenancy rights of their father. It was specifically averred that the shop in question was lying closed as all the said legal heirs have shifted permanently to USA and no business was being carried out in the shop in question.

Accordingly, the ejectment was sought on the non-payment of rent from January 1983, cease to occupy the shop in question for the last more than 10 years, it having become unfit and unsafe for human habitation the building being more than 100 years old whose foundation had sunk and it outlived its life and utility and also on the ground of subletting to respondent No.8. A family settlement was set up which was stated to have been reduced in writing on 31.07.1983 whereby the petitioner became the owner of the shop in dispute and the fact that the factum of the change of ownership had been implemented in the municipal record was pleaded.

Contest was only put up by the present petitioner by filing a reply and the sub tenant respondent No.8 was proceeded against ex-parte. The petition qua others was dismissed under Order 09 Rule 02 CPC for non-compliance of the order of the Court dated 03.06.2010. The entitlement of the landlord was challenged on the ground that he is neither the owner nor landlord of the shop in dispute and the shop was never let out by him and there was no relationship as such. The factum of the shop lying closed was denied and though there was no relationship, rent had already been tendered and the plea taken was that

he is in actual physical possession of the shop where he is running his business. Following issues were framed by the Rent Controller:-

1. *Whether the respondents are liable to be evicted on the ground of non-payment of rent? OPA.*
2. *Whether respondent Nos. 2 to 7 have ceased to occupy the shop for the last more than 10 years and are therefore, liable for ejectment? OPA.*
3. *Whether shop in dispute has become unsafe and unfit for human habitation and is in a dilapidated condition being more than 100 years old which is beyond repair? OPA.*
4. *Whether respondent No. 8 claims to be a tenant by the respondent Nos. 1 to 7 without concurrence, consent of landlord and therefore, the respondents are liable to ejectment? OPA.*
5. *Whether Baij Nath has no locus standi to file the present application, if so, to what effect? OPR.*
6. *Whether petition is bad for nonjoinder of necessary parties as legal heirs of Santokh Singh are necessary and proper parties.*
7. *Relief.*

In order to prove the said issues, landlord examined as many as four witnesses including himself. The family settlement having been entered in the register of deed writer was brought on record as Ex.P2 apart from the assessment register of municipality Ex.P3. The Draftsman as PW2 and Architect as PW3 had been examined to prove his report Ex.PW2/C and site plan prepared by him as Ex. PW2/C along with the photographer Om Parkash as Ex.PW4.

Keeping in view the statement of Jasbir Singh, attorney of the present petitioner through whom even the present revision petition has been filed, it was noticed that civil suit had been filed against the landlord for permanent injunction (Ex.PX) and thus there was a relationship of tenant and landlord as such proved. There was specific averment in the civil suit that the family members being sons of Kishore Chand were the owners of the shop. Santokh Singh had been inducted as tenant and his LRs thus remained in possession. In view of the rent tendered, the issue was decided against the landlord regarding payment of arrears; issue of cease to occupy was also decided against the landlord as no effort had been made to get the record of the electricity department for the consumption of electric energy to prove the lack of occupation. The statement of the expert witness namely Vikas Chopra, Architect was preferred over the statement of expert produced by the present petitioner who was a mere Draftsman. It was duly noticed that as per the report and photographs, there was grass growing on the roof top and no brick pavers were present, cement flooring of the shop had sunk 2½ feet below the road level and bricks were scattered here and there on the roof top. The roof was in a bad condition and supports had been given under the roof. The walls were having no cement plaster and the holes were visible in the wall and mud was seen oozing out from the joints.

Thus the draftsman of the present petitioner, RW2 Jasvir

Singh opinion that the shop required minor repairs was rejected and Rent Controller came to the opinion that premises are unfit and unsafe for human habitation and needed demolition.

On the issue of subletting, it was noticed that the present petitioner was residing abroad and he was contesting through the attorney. Business which was allegedly run by Santokh Singh was of bores and tubewells. The attorney had purchased the adjoining shop and Santokh Singh had gone to USA and therefore, keeping in view the fact that other family members were not running the business the stand taken that only the present petitioner had inherited the tenancy rights was accepted and it was held that subletting had been done. Issue No.5 was accordingly decided regarding *locus standi* in favour of the landlord and the non-joinder of the necessary parties being the legal heirs of Santokh Singh was decided against the tenant and accordingly eviction was ordered.

In appeal, the Appellate Authority noticed that the matter had remained pending for 6½ years before the Rent Controller and Inderjit Singh, present petitioner came only once. He had executed power of attorney in favour of Jasbir Singh on 15.05.2006 at New York. The attorney had purchased the shop of Santokh Singh 20 years back which was adjoining shop. Jasbir Singh had continued the business and therefore, it was held that the appeal was thus of Jasvir Singh. Resultantly, keeping in view the principles that subletting is a

secretive arrangement and the landlord cannot be party to any such agreement, the findings of subletting was confirmed. The judgment of the Apex Court in **Janki Devi Vs. Indusind Bank 2005 (1) RCR 241** was also referred to keeping into account the attention the attorney was paying and the principal had not come forward to depose. Therefore an adverse inference as such was rightly drawn against the present petitioner, who is admittedly a resident of USA and thus cannot be in possession of the premises. He has neither come forward to present his case personally that he is running the premises or doing any business in the said premises. The findings which have thus been recorded, qua the unfit and unsafe is on the basis of experts which were duly examined to prove the report. The report that the roof of the shop would vibrate with the movement of human beings and had become uneven would go on to show that valid reasons have been given. The fact that the shop is 100 years old shows that the reliance upon the report of Architect was well justified.

The above said reasonings given by the Courts would show that they have duly applied their mind to the principles which have been laid down by the Apex Court in **Ms. Celina Coelho Pereira and others vs. Ulhas Mahabaleshwar Kholkar and others 2009 (4) RCR (Rent) 456**, wherein it has held as under:-

28. The legal position that emerges from the aforesaid decisions can be summarised thus :

(i) In order to prove mischief of subletting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of possession and (two) that such parting with possession has (2008) 7 SCC 722 been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to subletting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(v) Initial burden of proving subletting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party

and that he (tenant) continues to hold legal possession in tenancy premises.

(vi) In other words, initial burden lying on landlord would stand discharged by adducing prima facie proof of the fact that a party other than tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.

The premises are no longer with the present petitioner who is now residing abroad and the litigation is being continued by the neighbour who was a total stranger to the relationship of landlord and tenant. Resultantly, the ground of subletting has also been made out and present petition is devoid of merits and is accordingly dismissed, in limine.

(G.S. SANDHAWALIA)
JUDGE

07.03.2017

kv

Whether speaking/non-speaking : Yes/No

Whether reportable : Yes/No