

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

(112)

**Civil Revision No.1345 of 2017 (O&M)
Decided on : 21.03.2017**

Hans Raj Malik (deceased) through L.R. Gulshan

... Petitioner

Versus

Saini Education Society (Regd.), Rohtak

... Respondent

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

Present : Mr. Surinder Gaur, Advocate
for the petitioner.

G.S. Sandhawalia, J.

The present revision petition is directed against the concurrent findings of the Courts below, whereby eviction has been ordered on the ground of bonafide requirement of the respondent-Saini Education Society (Regd.), Rohtak (hereinafter referred to as 'the Society'). The Rent Controller, Rohtak had passed the order on 28.02.2013, which has been further upheld in appeal on 05.11.2016.

The matter was partly argued on 23.02.2017 and the following order was passed:-

“Both the Courts below have directed ejectment on the ground of bona fide requirement of the Society, which was for using the premises, which are 250 sq.mts., for running a preparatory/nursery classes. It has come on record that the Society is running other educational institutions in Rohtak city. The eviction has also been ordered on the ground that a dairy-farm is being run in the premises and there is nuisance in the residential area.

Counsel submits that time would be required for relocation and since the petitioner has been in possession since 1975.

Accordingly, keeping in view the above position, in case the petitioner

is willing to file an affidavit that he would vacate the premises by 31.12.2017 and clear all the arrears, proceedings are deferred to 06.03.2017, for the said purpose.”

Today, Mr. Gaur submits the he would like to heard on merits, since the petitioner is not interested in seeking time to stay and to re-locate from the premises.

Counsel for the petitioner has relied upon the judgments of this Court in '**Brij Bhushan and another VS. Sanjay Harjai and another**' 2015 (2) RCR (Civil) 68 and in '**Rajiv Gupta Vs. Jiwan Ram**' 2015 (1) RCR (Civil) 762 to contend that in the absence of mandatory ingredients, the bonafide need was just an whim as such.

The said argument is without any basis. As noticed a specific averment has been maintained that the landlord-Society has already running a public school at Rohtak and, therefore, required the premises.

A perusal of the paper-book would go on to show that the tenancy in question was created in June, 1975 on a monthly rent of ₹175/- of the land measuring 250 square meters and described as Gher No.2, Sonapat Stand, Rohtak. Eviction was sought on the ground that the property has been sublet to one Madan Lal and material impairment has been done alongwith change of user, since a Dairy Farm was being run in the tenanted premises and on account of this reason the tenant is spoiling the environment of the locality by keeping the buffaloes within the residential area. The arrears of rent were also alleged, apart from the fact

that the Society required the property for personal necessity, as it wanted to open a school for preparatory/nursery school in public interest. It was alleged that Society is already running Saini Public School under its control in the said town.

In defence, petitioners denied the subletting and took the plea that right from the beginning Shri Hans Raj Malik and Shri Madan Lal were doing the business jointly. No material impairment had been done and neither any construction has been raised in the premises without permission of the landlord. The environment was not spoiled by keeping buffaloes. The need of the premises in question for running a school was denied. It was rather alleged that, since the school is already being run, the other school could also be opened in the same land.

On examination of the Chairman of the Society alongwith Secretary as PW-1 and PW-2 and keeping in view the statement of the Ex-Secretary PW-3, the Rent Controller came to the conclusion that there was no reason to doubt the genuineness of the version put forth by the Society, as it had been admitted that the Society had already numerous educational institutions in Rohtak. The tenant had been in possession for the last 37 years and, therefore, the genuine need for opening of a preparatory/nursery school would be beneficial for the students of the area and bonafide necessity was made out.

Reliance was placed upon the judgments passed in ***'Narinder Kumar Vs. Smt. Raghbir Kaur, 2011 (4) Law Herald (P&H)-3457, 'Vijay Kumar Vs. Rajeev Kumar Murria, 2011 (4) Law Herald***

(P&H)-3571, Maqsood Ahmed Vs. Ajay Sharma, 2011 (3) Law Herald (P&H)-2264 and 'State of Punjab and another Vs. Rajinder Jain and another, 2010 (1) RCR-461 to come to the said conclusion.

Similarly, it was noticed that construction had been raised in the tenanted premises, which was visible from the photographs Mark R-1 to R-6 and there was no such material to show that any permission had been taken from the landlord. However, on the issue of subletting and on arrears, the Rent Controller did not agree with the contention of the landlord and rejected the same.

The Appellate Authority has accepted the contention of the tenants that by mere raising construction or doing repair did not mean that there is any material impairment in the value and utility and, accordingly, reversed the findings on this ground. The objection that the Society is occupying other building in the urban area or not vacated the same without any sufficient cause was rejected on the ground that the specific case as such was that the Society was running educational institutions. The landlord was best judge of its need and if it required the land for running a preparatory/nursery school, the tenant was no one to contend that the land was less than that area which was permitted to run such a school. Resultantly, the mandatory ingredients not having been as such specifically pleaded, the arguments were rejected by the Appellate Authority.

Similarly, the factum that the project report should have been submitted before the Court was also felt not necessary. The earlier

litigation *inter se* the parties was also taken into consideration to note that the issue of personal necessity was never raised as such. Therefore, the objection as such regarding the maintainability of the petition was not held to be against the landlord. Resultantly, the ejectment order dated 28.02.2013 was upheld to the extent of eviction which was passed on the grounds of personal necessity.

The legal objection has now been raised as to the mandatory ingredients and, therefore, in the absence of any objection having been taken at the initial stage, the same cannot be pressed into action. Even otherwise, once parties have led their evidence and brought on record evidence to the effect that it required the premises for over and above for the same purpose for what they were already using their other properties. No prejudice as such has been caused to the petitioner-tenant. The petitioner was well aware regarding the running of the Saini Public School at Rohtak as it has been specifically pleaded that the preparatory/nursery school should be opened in the same school and, therefore, it does not lie in the mouth of the tenant to alleged that mandatory ingredients as such should have been specifically pleaded. No prejudice as such has been caused to the petitioner-tenant and there is no material concealment as such which would warrant interference under the revisional jurisdiction.

The Supreme Court while while dilating on the issue of bonafide requirement of the landlord in '***Sarla Ahuja Vs. United India***

Insurance Company Ltd.' 1998 (8) SCC 119 held that the requirement of landlord for occupation of the tenanted premises must be bonafide and the Rent Controller shall not proceed on the assumption that requirement is not bonafide. The principle that tenant is not to dictate terms to the landlord as to how the property could be utilized and how the landlord had to adjust himself was kept in mind.

Thereafter, in '***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta' 1999(3) Supreme Court Reporter 1260***, it was held that the bonafide and genuine need of the landlord is to be taken into account and that the Court would not put its own wisdom upon the choice of the landlord and a practical approach was to be kept in mind. The requirement should be sincere and honest and not a mere pretense. If the facts showed that the answer was in positive, the need was to be considered bonafide. Relevant observations read as under:-

12. Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle

him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

Accordingly, it was held that the landlord could not be asked to shift to a different house and locality whereas the tenant would continue to live in the tenanted premises and if the landlord wished to live in comfort of his house, the law could not expect him to live in a

smaller premises while protecting the tenant's occupancy.

In the present case, the Society has not felt the need of the premises, since 1975 and filed the petition for bonafide requirement only on 01.08.2007, after 32 years.

Similarly, in '**Atma S. Berar Vs. Mukhtiar Singh**' AIR 2003 SC 624 it was held that the landlord is the best judge of the premises and has complete freedom regarding how he is to use his premises and it is not for the tenant or for the Courts to hold whether the requirement is not appropriate and that he continues functioning in the premises in question.

The relevant observations read as under:

“15. The learned Counsel for the tenant-respondent submitted that the findings arrived at by the Rent Controller and the appellate authority were vitiated and the High Court was justified in interfering therewith especially in the light of the events which had taken place during the pendency of the proceedings. The power of the Court to take note of subsequent events is well-settled and undoubted. However, it is accompanied by three riders; firstly, the subsequent event should be brought promptly, to the notice of the Court; secondly, it should be brought to the notice of the Court consistently with rules of procedure enabling Court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events; and thirdly, the subsequent event must have a material bearing on right to relief of any party. We have dealt with each one of the so called subsequent events brought to the notice of the High Court as also of this Court by the learned Counsel for the tenant-respondent. None of them causes a dint in the case of bona fides and need as were found proved by the authorities below the High Court. Seen in the light of normal human nature and behaviour, the events pendente lite rather reinforce the direness of the need. We need only remind ourselves of the observations made by three-Judges

Bench of this Court in Prativa Devi's case (supra) - "the landlord is the best judge of his residential requirements. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own". The High Court need not be solicitous and venture in suggesting what would be more appropriate for the landlord to do. "That was the look out of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for..... There is no law which deprives the landlord of the beneficial enjoyment of his property". The present one, in our opinion, is an appropriate case where the High Court ought not to have interfered with the findings of fact arrived at by the two authorities below and that too concurrently, in exercise of its revisional jurisdiction simply because it was inclined to have a different opinion."

The right and privilege of the landlord to choose the nature of business and place and the fact that the tenant cannot dictate the terms and advise him what line of action he should follow or what he should do and what he should not do has time and again been frowned upon by the Apex Court. It has also been held that a pragmatic approach is to be taken and the crucial date of litigation when the suit for eviction was filed although subsequent events can be taken into consideration for moulding the reliefs have to be kept in mind but the fact remains that the person who had started litigation cannot be expected to sit idle during the said period. The observations of the Apex Court in '**Pratap Rai Tanwani Vs. Uttam Chand**' (2004) 8 SCC 490 and '**Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and others**' (2005) 8 SCC 252 are to this effect.

It is settled principle that this Court is not sitting as a Court of second appeal which would re-examine the evidence for the third time. The said view has been laid by the Constitutional Bench of the the Apex Court in '**Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh**' **2014 (9) SCC 78**. The relevant observations read as under:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all

questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

The said view has been followed and reiterated in '**M/s Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others' (2016) 3 SCC 343** wherein the High Court had interfered with the findings of the fact and the reasoning was held to be not justified in view of the law laid down. The relevant observations read as under:

*“21. Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of **Hindustan Petroleum Corporation Ltd. (supra)** while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.”*

Resultantly, keeping in view the above, this Court is of the opinion that there is no scope for interference in the well reasoned orders

passed by the authorities below. Accordingly, the present revision petition stands dismissed.

MARCH 21, 2017

Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No