

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

(102)

**Civil Revision No.2487 of 2016 (O&M)
Decided on : 25.05.2017**

Sudesh Rani and others

... Petitioners

Versus

Surjit Kaur and another

... Respondents

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

Present : Mr. Naveen Mandhan, Advocate for
Mr. Pankaj Bali, Advocate for the petitioners.

G.S. Sandhawalia, J.

The petitioner-tenant is aggrieved against the order dated 24.08.2015 passed by the Rent Controller, Ludhiana, whereby eviction has been ordered on the ground of bonafide requirement of landlords.

The said order has been upheld by the Appellate Authority vide order dated 28.01.2016 while partially modifying the eviction, which was also on the ground of arrears of rent by coming to the conclusion that the rate of rent was ₹200/- and not ₹500/- and, therefore, the tenant was not in arrears.

The reasoning which weighed with the Courts below to order eviction was that it was a case of the respondent No.1 that she was having house at Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh Sahib, which is an industrial town and, therefore, she wants to shift to Aniyanwala Mohalla, Nai Abadi, Khanna, District Ludhiana.

The Rent Controller noticed that the husband and wife are more than 70 years old and, therefore, want to shift to the premises in the evening of their life, on account of suffering from old age ailments. It was also

noticed that it was admitted by the tenant himself that there was an iron factory at village Nasrali, which came in the jurisdiction of Mandi Gobindgarh. Resultantly, keeping in view the settled principle that the tenant is nobody to dictate to the landlord as to how he is to utilize his property eviction was ordered on the ground of personal use of respondents No.1 and 2.

The disputed issue No.4 whether there is a relationship of landlord and tenant was rightly firstly taken up and it was noticed that there is a Will dated 27.04.1991 executed by Ralla Singh, the grandfather of respondent No.2 in his favour and on an earlier occasion *inter se* the parties, the Rent Controller has held that Raj Kumar, predecessor-in-interest of the present petitioner was a direct tenant of Ralla Singh. The respondents being legal representatives of Ralla Singh were entitled to seek eviction and there being no dispute of relationship of landlord and tenant and resultantly, eviction was ordered.

The said findings were also validated by the Appellate Authority on the same reasoning though as noticed on account of earlier litigation the rate of rent was reduced to ₹200/- under issues No.1 and 2.

The respondent No.2 in order to prove his case had stepped into the witness box and tendered necessary documents and in defence the petitioner No.4 Vikas Bakshi son of Raj Kumar had stepped into the witness box.

Resultantly, the Courts below have arrived on the finding that the property is required by the landlords and the case set up on the

Will, which was not properly proved would not as such give them any right to challenge the relationship of landlord and tenant as nothing has been brought on record to show that there were other legal heirs to the property as such. Once on an earlier occasion *inter se* Ralla Singh, the grandfather of respondent No.2, it has been found that there is a relationship of landlord and tenant *inter se* the parties, the tenant could not as such deny the relationship.

The Supreme Court while dilating on the issue of bonafide requirement of the landlord in ***Sarla Ahuja Vs. United India Insurance Company Ltd. 1998(Sup2)) Supreme Court Reporter 390*** 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.

Similarly, Hon'ble Apex Court in ***Joginder Pal Vs. Naval Kishore Behal 2002 (2) PLR 625*** while taking into consideration the provisions of section 13 of the East Punjab Urban Rent Restriction Act, 1949 has held as under:

“24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the

landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a

sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.

Thereafter, the conclusions were drawn up which reads as under:

Our conclusions are crystalised as under:

(i) the words 'for his own use' as occurring in Section 13(3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression landlord requires for 'his own use', is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord

himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as inter-relationship and inter-dependence economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or

dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii)."

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."

On an earlier occasion time had been taken repeatedly on the ground that the matter was being compromised and even a request was made that an undertaking would be given to vacate the premises within a specified time frame, but subsequently counsel submitted that he has no

instructions and addressed arguments, which in view of the findings recorded above do not as such warrant any interference. The argument that it was a mere wish and pretence, would not be tenable, in view of the settled position of law, as discussed above.

Resultantly, the present revision petition is dismissed in limine.

MAY 25, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No