

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CR No.2899 of 2015 (O&M)

Santosh Rani and others ... Petitioners

Versus

Dr. Manpreet Singh Sekhon ... Respondent

2. CR No.3850 of 2015 (O&M)

Dr. Manpreet Singh Sekhon ... Petitioner

Versus

Santosh Rani and others ... Respondents

Date of Decision: 24.10.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.K. Sandhir, Advocate,
for the petitioners in CR No.2899 of 2015 and
for the respondents in CR No.3850 of 2015.

Mr. Jaswinder Singh, Advocate,
for the petitioner in CR No.3850 of 2015 and
for the respondent in CR No.2899 of 2015.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CR No.2899 of 2015 titled *Santosh Rani and others v. Dr. Manpreet Singh Sekhon* & CR No.3850 of 2015 titled *Dr. Manpreet Singh Sekhon v. Santosh Rani and others*, one filed by the tenants and the other filed by the landlord.

2. In this petition filed by the tenants, they will henceforth be referred to as tenants since they are respondents in the accompanying petition filed by the landlord and the original petitioner will be referred to as a landlord.

3. The tenancy dispute is with respect to a demised wooden *Khokha* (Cabin) and one room as shown red in the SITE plan attached with the petition forming part of larger property bearing No.613 (old), 23/101 (new) situated at Adda Dakha, behind Bus Stand, Mandi Mullanpur, Tehsil & District Ludhiana. The respondent Dr. Manpreet Singh Sekhon is the owner and landlord. He filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 to evict the tenants. The grounds of eviction were non-payment of rent and personal necessity of the landlord to clear the place to open a hospital. The landlord is a medical doctor. The personal necessity is for the wife of the doctor. It is not disputed that the landlord owns other properties in the surrounding area. In defence, the tenant pleaded that landlord had no personal necessity or bona fide need to get the demised premises vacated since the landlord has a history of getting properties vacated and then selling them and certified copies of such transactions have been adduced by the tenant by way of sale deeds Ex.D-1, D-2 and Ex.D-22, D-23, D-26 and D-27 vide which the landlord and his family are imputed a penchant to constantly sell their properties falling in the urban area of Mandi Mullanpur. In view of this assertion, the question falls for consideration is whether the present respondent landlord and his family members had actually got vacated any property in the urban area of Nagar Panchayat Mandi Mullanpur Dakha as alleged by the tenants. The

landlord asserts that neither he nor his family members have got passed any ejectment order against any tenant in respect of any property located in the said urban area nor have the tenants produced any copy of such judgment, decree or order in this regard. Therefore, the contentions of the tenants are false and misleading. The second question is whether the landlord and his family members have actually executed and got registered sale deeds and if so, as to what the reason was for selling property and, lastly, as to how many sale deeds were actually executed by the landlord personally. The alleged sale deeds have been explained by the landlord as follows:-

*“Annexure R-1(Ex.D1) General Power of Attorney
(Page 7-8 of CM) executed by petitioners
Santosh Rani, Ashwani
Kumar, Suresh Kumar and
Sunita Rani in favour of
Pawan Kumar son of Jagdish
Rai.*

*(Document Ex.D1 is not a sale deed as alleged by
petitioners (respondents/tenants) , rather it is a General
Power of Attorney executed by petitioners/ tenants
Santosh Rani, Ashwani Kumar, Suresh Kumar and
Sunita Rani in favour of Pawan Kumar).*

*Annexure R-2(Ex.D2) Sale Deed dated 23.1.2008
(Page 9-11 of CM) executed by Sukhpreet Singh
in respect of one shop
measuring 16.89 sq. yds. in
favour of Mohinder Kaur wife
of Ranvir Singh.*

*(Sale Deed executed by Sukhpreet Singh brother of
respondent Dr. Manpreet Singh Sekhon
(owner/landlord)).*

*Annexure R-3(Ex.D22) Sale Deed dated 27.3.2012
(Page 12-15 of CM) executed by Sukhpreet Singh
brother of Dr. Manpreet*

*Singh Sekhon
(owner/landlord) in respect of
shop measuring 0B-0B-
02½B(Pukhta).*

**Annexure R-4(Ex.D23)
(Page 16-19 of CM)** *Exchange Deed dated
18.4.2012 executed by
respondent Dr. Manpreet
Singh Sekhon
(owner/landlord) alongwith
his brother Sukhpreet Singh
and sister Jaskimran Kaur in
respect of an area measuring
0B-8B-8B(Pukhta), which has
been exchanged with Preetpal
Kaur wife of S. Manmohan
Singh vide Registered
Exchange Deed Vasika
No.136 dated 18.4.2012
registered with Joint Sub
Registrar, Mullanpur Dakha,
Tehsil and Distt. Ludhiana.*

***(Exchange Deed executed by respondent Dr. Manpreet
Singh Sekhon alongwith his brother Sukhpreet Singh and
sister Jaskimran Kaur in respect of an area measuring
0B-8B-8B(Pukhta), which was exchanged with Preetpal
Kaur w/o Manmohan Singh vide Registered Exchange
Deed Vasika No.136 dated 18.4.2012 registered with Joint
Sub Registrar, Mullanpur Dakha, Distt. Ludhiana).***

**Annexure R-5(Ex.D24)
(Page 20-36 of CM)** *Jamabandi for the year 2009-
2010 of village Baraich,
Tehsil Mullanpur Dakha,
District Ludhiana.*

***(This document is infact a Jamabandi showing location
of properties in urban area of Mandi Mullanpur).***

**Annexure R-6(Ex.D25)
(Page 37-47 of CM)** *Another Jamabandi for the
year 2009-2010 of village
Baraich, Tehsil Mullanpur
Dakha, Distt. Ludhiana.*

(This document in as much is a Jamabandi showing ownership of agricultural land of the family in ythe area of village Baraich).

*Annexure R-7(Ex.D26) Sale Deed executed by Smt.
(Page 48-50 of CM) Renuka widow of Sukhminder
Singh in respect of one shop
measuring 0B-0B-02½ B
(Pukhta) in favour of Meena
Rani widow of Bikramjit
Kumar.*

*(Sale Deed executed by Smt. Renuka widow of late S.
Sukhminder Singh paternal uncle/ Chacha ji of
respondent Dr.Manpreet Singh) in respect of shop
measuring 0B-0B-02½ B (Pukhta) in favour of Meena
Rani widow of Bikramjit Kumar).*

*Annexure R-8(Ex.D27) Sale Deed executed by
(Page 51-54 of CM) Sukhpreet Singh in respect of
stairs measuring 0B-0B-0.50B
(Pukhta).*

*(Sale Deed executed by Sukhpreet Singh brother of
respondent Dr. Manpreet Singh in respect of stairs
measuring 0B-0B-0.50B (Pukhta)*

*Annexure R-9(Ex.D29) Copy of Gazette Notification
(Page 55-56 of CM) dated 19.7.1988 in respect of
Notified Area Committee,
Mullanpur Dakha, District
Ludhiana published in Punjab
Government Gazette (Extra
Ordinary) dated 20.7.1988.*

(This documents is a Gazette Notification only).”

4. The landlord has petitioned with respect to arrears of rent in tenants defaulting in making payments of rental since March 2006.
5. At the end of the day what is admitted by the owner landlord is execution of one Exchange Deed Ex.D-23 and General Power of Attorney Annexure D-1 in respect of shop measuring 58.66 sq. yards which was

common with his sister Jaspreet Kaur and brother Sukhpreet Singh. The allegation regarding execution of seven sale deeds is asserted to be wrong and misleading. Other than Dr. Manpreet Singh Sekhon, it is admitted that three sale deeds have been executed by his mother, brother and sister during the period 2008-2013. The reasons for these sale deeds have been explained which are not necessary to elaborate since owner of property has a right of sale which cannot be questioned by the tenant for want of locus standi especially in eviction proceedings which are based on statutory grounds and only those grounds are to be examined and none else from the evidence available on record.

6. Dr. Manpreet Singh Sekhon's case in his petition is for setting aside the findings of the Appellate Court in respect of issue No.1 relating to arrears of rent returned in favour of the tenants as they denied relationship of landlord and tenant during the course of proceedings before the Rent Controller and Rent Controller while deciding issue No.4 regarding existence of relationship of landlord and tenants in landlord's favour regarding which no appeal was preferred by tenants before the Appellate Authority. The findings on the point are final. Therefore, ejectment deserves to be maintained on account of denial of relationship of landlord and tenants as well. In this regard, the landlord/owner places reliance on the rulings of this Court in Baseshar Nath Trust v. Kripa Devi, 2010(4) PLR 185 (Punjab & Haryana), Hukma Devi v. Bhagwan Dass, 2003(1) Rent LR 528, Yashpal Singla v. Vijay Kumar, 2004(2) RCJ 198, Narinder Singh v. Sarabjit Singh, 2006(2) R.C.R. (Rent) 226, Dr. Pawan Kumar Bansal v. Gaurav Garg and another, 2010(1) Rent LR 402 & Harish Chander (deceased) through LRs v.

Mohinder Singh – 2009(1) R.C.R. (Rent) 680.

7. This is a background on which both the petitions have to be decided.

8. The Rent Controller, Ludhiana vide her order dated May 08, 2013 has dismissed the rent petition by concluding that the petitioner landlord has failed to prove the grounds of eviction regarding personal necessity of his wife to establish a hospital. The learned trial Court has held that eviction/vacation of another building in the urban area has not been proved but the Rent Controller has erred in thinking that since adjoining properties had been sold it militates against bona fide spirit of personal necessity. The Rent Controller misdirected itself on ground of non-production of the professional degree of MBBS by the petitioner/landlord and therefore, the objection of the tenant is not without merit. The petitioner produced his degree as Ex.P-1 along with other exhibits but the same has not been initialled. What is the meaning of “initialled” has not been explained by the Rent Controller to doubt the degree and, therefore, the need to open a hospital on the demised premises in the thinking of the Rent Controller that eviction is possible only when the need of the landlord becomes “intense” then, tenant is to vacate the premises but if it is proved that ground of eviction is mentioned but said landlord is not in a position to prove his necessity or to prove default of payment of rent of respondents, then eviction is not to be considered and, therefore, the issue of personal necessity is not proved and the same has been decided against the landlord.

9. In the appeal carried to the Appellate Authority, the same has been successful and the order of the Rent Controller has been reversed. The

appeal has been allowed and the order of the Rent Controller had been set aside. Personal necessity has been proved. The landlord has proved that he holds MBBS degree from Government Medical College, Patiala. He has been practicing as a doctor for the last more than 12 years at the time of passing of the order of the Appellate Authority on February 25, 2015.

10. The history of ownership over the property in question has been explained by the landlord. The demised premises were owned by his grandfather Mohinder Singh Sekhon comprised in Khasra No.1323 as depicted in the Jamabandi Ex.P-3. The site plan has been proved. The TS-1 certificate issued by Nagar Panchayat, Mullanpur has been produced as Ex.P-4. Mohinder Singh Sekhon rented out the demised premises to Jagdish Rai, the predecessor-in-interest of respondents/tenants @₹100/- per month about 30 years back. The estate of late Mohinder Singh Sekhon was inherited by his legal heirs, namely, Gurjit Kaur, his widow and sons Sukhwinder Singh Sekhon and Major Maninderjit Singh Sekhon. However, by a family settlement Mark 'A' effected in the family, the demised premises fell to the share of the landlord's father Major Maninderjit Singh, his grandmother Gurjit Kaur and mother Jagdeep Kaur. His father expired on January 04, 1989 and after his demise, his grandmother Gurjit Kaur and mother Jagdeep Kaur, brother Sukhpreet Singh Sekhon and sister Jaspreet Kaur and the landlord inherited his estate being the only legal heirs by succession. During his life time landlord's grandmother transferred her share out of Khasra No.1323 vide sale deed Ex.P-7 in favour of landlord's brother Sukhpreet Singh and the landlord in equal shares. Thus, the landlord, his brother Sukhpreet Singh and his mother Jagdeep Kaur and sister Jaspreet

Kaur became exclusive owners of the property in dispute. Neither Jadgish Rai (original tenant), nor his legal heirs paid rent or arrears of rent w.e.f. September 01, 1997.

11. The central fact which emerges at site is that the demised premises have blocked substantial portion of the front side of the property facing the GT road and, therefore, the property lying at the back is of no use and for this reason the landlord requires the demised premises as a bona fide need to raise construction of the hospital over the entire property comprised in Khasra No.1323 and the landlord has not vacated any such property in the urban area.

12. It would be profitable to refer to Annex P-7 in the landlord's petition. The entire property in Khasra No.1323 can be easily understood in the site plan Annex P-7. The property is in the rectangular shape with the frontage of 60'-6". The length of west side is 150' and on the east side a little longer measuring 155'-9". The demised premises lies on the left west side corner facing the GT Road (Ludhiana to Jagraon). From the road side the demised premises is 25'-6" in length within open space of 13'-6" by 20' and behind the small open space is a room 18' by 13'-6". On the west side there is a passage along the room which opens out into the *Khokha or kiosk* which is about 8 ft. by 8 ft. in front and covering the *khokha* on the open space is a shelter/shed and further south is the wooden cabin in occupation of the tenants. The remaining plot is an open unconstructed space. There could be no better evidence than photographs of the tenancy premises at Annex P-8 which are scanned in colour and reproduced and inserted below

for ease of understanding:-

Annexure-P8

Photographs of tenancy premises



Annexure-P 8

Photographs of tenancy premises



13. These photographs virtually conclude the case. A picture is better than a thousand words. The Appellate Authority has rightly reversed the orders of the Rent Controller and held that landlord's necessity is bona fide as he requires removing the ramshackle construction to make way for construction of a building to house the proposed hospital. In the event of eviction, in case the landlord rents it out to third party then tenant would have right of re-entry which right he can always claim but prima facie the ground for eviction based on personal use and occupation as a personal requirement and necessity eminently exists of which need the landlord is the best judge. The relationship of landlord and tenant is eminently established on record. Moreover, the assertion of the landlord that the demised premises have been lying vacant for more than a year is a statement of fact asserted in the affidavit dated May 05, 2007 filed before the Rent Controller. The photographs testify to this fact of desolation and no further evidence is required, *res ipsa loquitur*. Besides, the tenant is not an advisor of the landlord of his requirements and can not restrain him to seek possession by way of eviction to construct his hospital and look for land somewhere else other than on the vacant plot of which a small portion comprises the demised premises. Even if the landlord and his family have sold and transferred properties by sale deeds as admitted by the landlord even then he was entitled to get the demised premises vacated on the ground of bona fide requirement. Merely because land was sold it would not give colour of mala fides. Owner has right to sell and tenant is no one to use it as a defence in the rent petition. The landlord has not vacated any premises in the urban area of the Nagar Panchayat, Mullanpur, Ludhiana nor given on rent any

other property owned and possessed by the landlord.

14. Accordingly, CR No.2899 of 2015 fails and is dismissed.

15. Coming to the landlord's petition i.e. CR No.3850 of 2015 I have every reason to accept the prayer and to that extent the Appellate Authority, Ludhiana has fallen in error in affirming the findings of the Rent Controller on issue No.1 in favour of the tenant and against the landlord. Issue No.1 was whether respondents are in arrears of rent. The Appellate Authority has held that the landlord is not entitled to get ejectment of the tenants on ground of non-payment of arrears of rent. The learned Appellate Authority has applied the ruling in Rakesh Wadhawan v. Jagdamba Industrial Corporation, 2002 (1) RCR (Rent) 514 (SC) and directed tenants to pay all the outstanding arrears of rent to the petitioner and deposit the same in the Court accruing after March 03, 2006 within two months from the date of the order of the appellate authority dated February 25, 2015. It is, therefore, necessary to revisit the order of the Rent Controller on issue No.1 and for this paragraph 12 may be read. Paragraph 12 reads as follows:-

“12. This issue was to be proved by the petitioner/applicant. In para no.8 of the affidavit of Manpreet Singh, he has submitted that Jagdish Rai did not pay any rent to him or his family members from 01.09.1997 and after his death on May 2002, his legal heirs i.e. respondents failed to pay any rent till the filing of this petition. As a matter of record order dated 03.03.2006, shows that rent was tendered on that date and the then learned counsel for petitioner received it on his behalf from 01.09.1997 to 01.03.2006 without any protest and without any objection of being either short or invalid. It shows the complete satisfaction on behalf of petitioner and it also shows that the respondents are not in arrears of rent.

Moreover PW Jagdeep Kaur has clearly stated in her cross-examination that rent has been paid to her son. Thus, Issue stands not proved and is decided against petitioner.”

16. Up till March 03, 2006 arrears tendered were received by the counsel for the landlord but it is evident that rent has not been paid after March 2006. The rent application was filed on January 04, 2006 and the tenants stand evicted by orders of the Appellate Authority, Ludhiana on February 25, 2015 and in between there has not been any payment of rent howsoever small the amount may be which was no more than ₹100/- per month when late Jagdish Rai was inducted as tenant by the landlord's grandfather.

17. To answer this, one would have to go to the petition filed by the landlord.

18. It is argued by the learned counsel for the landlord that when Rent Controller proved the existence of relationship of landlord and tenant inter se the parties then the observation of the Appellate Court that denial of relationship of landlord and tenant was half hearted is to my mind erroneous. Same could have been avoided is a contention worthy of acceptance that tenant not having appealed against the finding on issues Nos.4 and 5 then the comment of “half hearted” denial by tenant was not proper understanding. Denial of relationship in rent proceedings bears violent outcome and tends to non-suit the tenant forthwith once relationship is proved before the Rent Controller. When tenant denies existence of relationship of landlord and tenant then there is no question of granting any misplaced or sympathetic opportunity to the tenant to deposit the amount of rent or its arrears to stall eviction on this ground, not to speak of the ground

of personal need. See rulings in *Baseshar Nath Trust* case (Supra) and *Dr. Pawan Kumar Bansal* case (Supra).

19. Having considered the point of view canvassed by the landlord I would not join issue since the rent is nominal and the accompanying petition filed by the tenant has been dismissed, hence the purpose of the landlord's petition is served and the exercise rendered academic and agitated mostly on logic based on tenants' irksome denial of relationship of landlord and tenant.

20. The petition having been dismissed as above and for the reasons stated in this order, it is directed that the tenant would vacate the premises within a fortnight of the receipt of this order since he has ceased to occupy with no explicit intention to reside in the demised premises or to do business there from. If the tenant does not vacate the premises by himself, the landlord will be within the law to seek police help and the SSP, Ludhiana and the Station House Officer of the Police Station of the area are directed to offer assistance to the landlord to get the premises vacated with reasonable force and the landlord put in possession of the demised premises on tenants' failure to do so.

(RAJIV NARAIN RAINA)
JUDGE

24.10.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*