

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

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**CR No.3907 of 2016
Date of decision: 20.02.2017**

Pawan Kumar

....Petitioner

Versus

Sita Ram

...Respondent

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

Present: Mr.Gaurav Sharma, Advocate, for
Mr.R.K.Sharma, Advocate, for the petitioner.

Mr.Sanjay Verma, Advocate, for the caveator/respondent.

G.S. SANDHAWALIA, J. (Oral)

Petitioner-tenant challenges the findings recorded by the Appellate Authority, Palwal dated 29.03.2016, whereby, while allowing the appeal of the respondent-landlord, eviction has been ordered on the ground of *bona fide* requirement from shop No.812-C, which was shown with letters ABCD in the site-plan and measures 7'x9'9" in Mohalla Neemtala, within the municipal limits Palwal, the boundaries were also given in the ejectment petition.

The petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973, was preferred on 04.10.2013, on the ground that there were arrears of rent from 01.01.2010 @ Rs.566.13 and the shop was required by the petitioner for his own *bona fide* need to establish his son, Dal Chand. It was mentioned that he is married and having 2 children and residing at New Colony, Palwal and rented out the premises with his family members and he was unemployed and his brother-in-law had given him temporary employment in his factory due to mercy and the said job was not suitable to the petitioner. It was pleaded that the landlord had 3 other sons who have been settled and therefore, it is necessary to provide

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independent business to Dal Chand. The factum of not having any other shop in the urban area of Palwal town nor having got vacated any other shop after the commencement of the Haryana Urban (Control of Rent & Eviction) Act, 1973, without any sufficient cause, was pleaded.

In response, the petitioner-tenant took the plea that there was no requirement of personal necessity and the landlord had been self-occupying properties Nos. 812-A, 812-B, 812-C and also shop No.809 and industrial plot No.244, in his name and his son-Subhash at Hathin. The petitioner was a tenant and previously, his brother was a tenant over the said shop. The factum of arrears of rent was denied, since it had been tendered on the first day of hearing. The respondent-landlord had got commercial property within the municipal limits, Hathin and was owner in possession in equal shares at Sr.No.244 property No.1880 and in the house tax records of Municipal Corporation, Hathin, having an area of 5175 sq.yards on the ground-floor and covered area of building was 5000 sq.yards, which was in the name of Subhash and Sita Ram. The son was paying income tax and having separate ration card.

The following issues were framed by the Rent Controller:

1. Whether the petitioner is entitled to an order of eviction with regard to the shop in dispute on the grounds mentioned in petition?OPP
2. Whether the petition is not maintainable in the present form?OPP
3. Whether the petitioner is estopped from filing this petition by his own act and conduct?OPP
4. Relief.

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The landlord examined as many as 5 witnesses including Dal Chand as PW4, for whom the requirement was for personal necessity whereas the petitioner-tenant examined himself as RW1.

Keeping in view the fact that the rent had been tendered, the said issue was not pressed. However, on the issue of *bona fide* requirement, the Rent Controller, keeping in view the statement of Dal Chand and the respondent-landlord, came to the conclusion that there were concealment of material facts. The son was working at Noida and the argument that by working with his brother-in-law, he felt morally degraded, was rejected and it was held that it was a mere desire, as such, and not a *bona fide* requirement.

The Appellate Authority examined the evidence again in its proper perspective and noticed that shop No.812-A and 812-B were earlier got vacated by the landlord, which were enclosed in the adjacent house premises of the landlord as the need of his family had grown. The requirement of the respondents had increased and two other shops had been got vacated which were, now, being used as part of the residential premises and could not be separated from the residence. The demised shop in question was part of the entire large building. The industrial plot, as such, which was referred to, was beyond the municipal limits of Palwal and was in the industrial area, Hathin, in which, there was 1/4th share. Merely because the son was having a job at Noida and because the father wanted to set him up, was no ground, as such, to deny eviction, since no other shop was lying vacant which could be used for setting up his son. Resultantly,

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keeping in view the principles that the landlord is the best judge of his requirement, he allowed the eviction petition.

Counsel for the petitioner has vehemently submitted that the son was not, as such, dependent and did not require the premises and it was just a mere desire and the findings of the Rent Controller were well justified and has been wrongly reversed.

The said argument is not liable to be accepted. As noticed, the family of the landlord was large and there were 4 sons. Earlier also 2 shops had been got vacated and were being used by the family members itself by using them as residential area by including them and making a larger residential premises. The requirement, as such, of a family would keep on changing with time especially if family members are large as in the present case. The application had been filed for evicting the petitioner from the shop in question on the requirement of Dal Chand who had duly appeared as witness and deposed regarding the said facts for his requirement. The Apex Court in ***Joginder Pal Vs. Naval Kishore Behal 2002 (2) PLR 625*** has specifically held that a narrow introspection cannot be given to the *bona fide* requirement of the landlord. The observations read 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

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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 inter-relation 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

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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.

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32. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act.”

The Appellate Authority, accordingly, keeping the said principle in mind, has, accordingly, allowed the ejectment application. The argument that on account of the landlord being owner of large number of properties, would not take counsel for the petitioner a long way. The requirement is of the son for the use and occupation of the premises, as such and thus, is the requirement of the landlord, as noticed in the above-said judgment. The industrial plot No.244 is beyond the municipal limits

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and even otherwise, there is only 1/4th share whereas the same stands in the name of Subhash Chand, who is stated to be the son-in-law of the landlord. A specific case was set also that while working with his brother-in-law, Dal Chand was not happy on account of matrimonial friction and in such circumstances, if he wanted to separate, as such, and do his own work, the same could not be questioned by the Courts. The principle has been repeatedly laid down that it is not for the Courts to dictate to the landlord how he is to utilize his properties. Thus, the findings, as such, recorded by the Appellate Authority, would not suffer from any procedural infirmity, which are liable to be interfered with, by this Court in revisional jurisdiction.

Accordingly, the present revision petition, being bereft of any merit, is, hereby, dismissed.

February 20th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*