

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3569 of 2017 (O&M)

Date of Decision: 13.12.2017

Vijay Kumar

... Petitioner

Versus

Parkashwati

... Respondent

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

Present: Mr. Vikas Bali, Advocate,
for the petitioner.

Mr. Amit Jhanji, Advocate,
and Mr. Parveen Jain, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.

1. The tenant has approached this Court under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 ("Act") with two orders against him, one of the Rent Controller, the other of the Appellate Authority dated February 23, 2017. He has been evicted from the demised premises which are a combination of residential and non-residential building. The shop was let out to the tenant in 1995 under rent note dated June 24, 1995 for commercial purpose for use as a shop. The front of the building opens into a bazaar. The building is double story. The possession of the ground and first floor including a shop abutting the demised shop is with the landlady and her family. The residential part has independent access to the road in front of the building. There are many commercial buildings and shops adjoining the demised premises.

2. The landlady is old and the family is in joint residence. She has five sons one of whom, namely, Satish Kumar has expired. One son is residing in Delhi and another has built a separate residence in the same town where he and his family live. Apart from his widow, Late Satish Kumar has a married son who resides in the property shown in the site plan. He was married shortly before filing of the petition for eviction, which was instituted on January 20, 2012. Her son Ashok Kumar is unmarried and resides with the mother. The 4th son Suman Kumar also resides in the same house with his wife and son. For these reasons, the accommodation is said to be insufficient for such a large joint family to house. The petition was brought on the grounds of non-payment of rent and for personal necessity for the use and occupation by the landlady and her family. The rent was ₹1200/- per month with enhancement clause of 10% after every two years. The rate of rent at the time of filing of the petition was ₹1787/-.

3. The case of the tenant was that the need was not bona fide. The landlady's sons Vijay Kumar and Parveen Kumar are living separately from the petitioner and Aditya Gupta son of late Satish Kumar lives in the first floor with his wife. Besides, Suman Kumar and his family have sufficient accommodation for his family settled on the ground floor of the residential part of the building which falls in the rear side of the demised shop. Tenant asserts that there was concealment of House No.ES-57 which is a double storied house constructed in the same mohalla.

4. A replication was filed reiterating the pleas in the ejectment petition.

5. The findings returned by the Rent Controller are that the

demised property is part and parcel of residential building of the landlady which was let out to the petitioner tenant. Nothing has come on record that the petitioner landlady in the ejectment petition or her late husband ever obtained any permission under Section 11 of the Act from the Rent Controller to convert the residential property into non-residential.

6. The rent was paid and, therefore, of eviction based on non-payment of rent does not subsist as a ground for eviction.

7. As far as bona fide need is concerned the Rent Controller after noticing a number of judgments reached the conclusion that the necessity of the landlady “seems” to be bona fide and genuine one. The Rent Controller held that there was compliance of legal requirements in Section 13 (3) (i) (a) of the Act as it is pleaded that the landlady had neither occupied nor had vacated any premises within the municipal area of Jalandhar. The Rent Controller read the evidence of RW-1 on the question of personal necessity to accommodate a large family testifying as follows:-

“The petitioner was blessed with five sons, out of which one son namely Satish Kumar has been expired. The children of Satish Kumar and his wife are staying in the house in question. I know Suman Kumar and family of Suman Kumar, who are residing in the house in question. Ashok Kumar is also residing in the house in question.”

8. The Rent Controller thought that there was a large family to deal with and that the need seemed bona fide.

9. The Rent Controller noticed the Full Bench decision of this Court in Hari Mittal v. B.S. Sikka, 1986 (1) RCR (Rent) 92 (P&H) (FB) to hold that when residential building has a room on the road side which is used and let out for a small shop that itself would not denude the character

of the building as a residential one. The Full Bench held that the residential building let out for a non-residential purpose by the landlord without obtaining the written permission of the Rent Controller in terms of Section 11 of the Act would continue to be residential building and the landlord would be entitled to seek the ejectment of the tenant on the ground of bona fide requirement.

10. In Hem Raj v. Ram Kumar Khosla, 1994 (93) PLR 374 and Surjit Singh Arora v. Harbans Singh, (1989) 95 PLR 6 this Court held that landlord cannot convert residential building into a non-residential building without the permission of Rent Controller under Section 11 of the Act and if the residential building is let out by the landlord for non-residential purpose even then landlord is entitled to eject the tenant for its residential purposes. Therefore, even non-residential premises can be got vacated for residential purposes on the ground of bona fide necessity. The landlord is sole arbiter of his choice. It is for the landlord to choose where he will put up. It is not for tenant to impose upon the landlord his choice, see Sarla Arora v. United Insurance India Company, 1999 HRR 58 (P&H) and the Supreme Court in State of Haryana v. Ved Parkash Gupta, 1999 HRR (SC) 96. It was pleaded in para.4 (ii) of the eviction petition by the landlady as follows:-

“That the tenanted premises is required for personal use and occupation by the petitioner and her family who are residing in the property shown in the site plan. The existing area is insufficient for the petitioner and her family. The petitioner has five sons namely Vijay Kumar, Parveen Kumar, Satish Kumar (since expired), Ashok Kumar and Suman Kumar. Vijay Kumar is residing in Delhi, Parveen Kumar has built a separate residence as the present accommodation was insufficient. Satish Kumar has expired, his wife and his married son namely Aditya Gupta is

residing in property shown in the site plan. It is pertinent to mention that Aditya Gupta has recently got married. Shri Ashok Kumar, who is unmarried is also residing with the petitioner. Shri Suman Kumar alongwith his son and family is also residing in the same house. The existing accommodation available with the petitioner has become deficient and is insufficient to accommodate a joint and such a large family, as such, the petitioner requires the premises for accommodating the family.”

11. That the demised premises is required for her personal use and occupation and of her family members because the residential area in their possession is insufficient to accommodate the joint family.

12. On the above premises, the Rent Controller, Jalandhar allowed the rent application by order dated May 21, 2014 and granted two months' time to the tenant from the date of passing of the order to hand over the vacant possession of the demised premises to the landlady.

13. Aggrieved by the order of the Rent Controller, the tenant carried an appeal to the Appellate Authority, Jalandhar who has upheld the eviction order and dismissed the appeal.

14. Of the other factual inputs which are necessary for decision in this case are that the landlady did not appear in the witness box. She appeared through Parveen Gupta, her holder of general power of attorney, who appeared in the witness box as PW-1 and deposed regarding the personal necessity of the landlady. Parveen Kumar @ Parveen Gupta has shifted from the building in question by purchasing his own property in the adjoining vicinity i.e. House No.21, Fauji Gali, Makhdoompura, Jalandhar which is a double storied house. He had moved out before the eviction petition was filed. This has led to reduction in number of family members.

15. As per stand of the landlady herself the family in residence consists of the wife and married son and daughter-in-law, her bachelor son Ashok Kumar and Suman Kumar along with his son and family. As per the site plan, the residential accommodation on the ground floor consists of three bed rooms and a drawing room, a kitchen and store as well as an extra kitchen with two bathrooms with a deori running through. On both sides the property lies between broad public roads. The landlady also has in possession the shop on the ground floor which has a common wall with the demised shop. The first floor consists of two rooms, kitchen and a bath and a large terrace.

16. Other than the landlady her family in residence is the widow and married son of late Satish Kumar, Suman Kumar with wife and son and the unmarried son (Ashok Kumar). By this count they are eight family members including the landlady. It is argued that none of them has stepped into the witness box to depose as to their personal need. The person brought to the witness box is Parveen Gupta who does not live in the house and lives with his family separately. The non-appearance of the nonagenarian landlady in the witness box is understandable due to advanced age but it is the wearer who knows where the shoe pinches. The ones who are pinched have not come forward to depose in favour of their mother or themselves. This to my mind is a suspicious circumstance in a case of personal necessity and bona fide need. Although the landlord is the best judge of his need her rights are to be balanced with the rights of a statutory tenant in long possession. In these special circumstances I am inclined to think that the statement of the attorney ought not to be read as a statement of the landlady

or as the gospel truth.

17. I have carefully read the eviction petition in all its 9 paragraphs and I have failed to see a pleaded case therein that the demised property is residential or partly residential building, nor there was issue framed on the said point regarding the character of the premises. What is not pleaded is not open to proof. I have no doubt that the findings of both the Rent Controller and the Appellate Authority regarding the nature of the property treating it to be residential is unwarranted in fact or in law and are therefore without jurisdiction and an entirely new case has been made out by the Rent Controller pegging the case on Section 11 of the Acts and the Appellate Authority endorsing the view including on bona fide need. Therefore, the property deserves to be treated as commercial or non-residential because it was let out for commercial purposes under a rent note entered in writing.

18. Moreover, it was not disputed that the shop is independent of the residential part of the building as there is no door connecting the back of the shop and the residential part on the ground floor behind.

19. The demised shop and the residential part of the ground floor have no access from any of the walls. The only possible entry would be from the bazar side and shop front.

20. Learned counsel for the petitioner Mr. Vikas Bali had cited the decision of the learned Single Judge of this Court in M/s Bharat Electricals through its partner Superinder Kumar and another v. Dr. Sukhdev Raj Goyal and another, 2012 (4) RCR (Civil) 26 to obtain notice of motion and stay in this case on May 16, 2017. The judgment covers the ground well inasmuch as it holds that if some portion of a residential building, which is converted

into a shop and is let out for non-residential purposes, and the shop has no access from the rear portion or any side to the main residential building and has only one opening to the main market, then it would be essentially a building used for non-residential purpose in the residential building and would be a separate unit/building for the purpose of the landlord to seek eviction of the tenant for non-residential purpose and not for residential purpose.

21. The Court is to take into consideration the position of the demised premises at the time of filing eviction petition. If there was no door in the hind portion of the demised premises when the property was let out in 1995 and when the petition was filed, then it has to be accepted that it was segregated portion of the main building and was an independent unit falling within the definition of a building itself in terms of Section 2 (a) of the Act being part of the building and exclusively used for non-residential purposes. If this is the position then the authorities have gone completely wrong in determining bona fide need of the landlady both in law and on facts. This appeals even to common sense that how can a landlord take advantage of his own act in letting out a shop to a tenant for commercial use and wanting to re-possess it by eviction of tenant on the ground of additional space for residence. It even defeats privacy that a residential part of the building would open out to a main bazar and be used as private living quarters.

22. It may be true that the strict rule of evidence disentitling a person to give derivative evidence through a power of attorney may not apply to cases falling under rent law. In Raghbir Singh v. Parvesh Kumar, 2015 (5) RCR (Civil) 418 relied upon by the landlord side is a case where

the bona fide necessity of a handicapped son was pleaded as ground for eviction for personal need. The landlord did not appear but the son did for whom the need was claimed and such evidence was sufficient in favour of the landlord. This is the distinguishing feature of that case from the present.

23. The case in Rajinder Kumar v. Niranjana Lal and another, 2006 (4) RCR (Civil) 840 was a shop in a residential building. The evidence brought on record showed that the room let out for commercial purpose was constructed as a residential building. I find nothing in the judgment to show any integrated connection between the residential part and the shop let out for commercial use. Therefore, this case is also distinguishable in preference to the judgment nearer home in M/s Bharat Electricals (Supra). Sanctions and building plans were not produced by the landlady to determine the character of the building from the municipal record before Section 11 can be invoked or looked at. The demised shop is not the only one stand-alone in a row of shops all facing the main road with small entrance to the residential portions where landlady's family live. We are dealing here with a busy market place and small shops in a cluster as appear from the photographs. The issue to be examined is the dominant purpose and the dominant purpose appears to me as commercial/non-residential as per the rent note/1995 as far as the demised premises is concerned. It is not the case of the landlady that she wants to put the demised premises for her personal need of starting business. She had applied for eviction and pleaded that she wanted the demised premises for her and her family's residence. On the date of filing of the petition or at any time before, the shop had no access to the residential part and was independent of it. Besides, another shop next to the demised

shop is owned by the landlady.

24. I would, therefore, find nothing common on facts from the present case and the one relied upon by the respondents in Raj Kumar Gambir v. Kanwar Sain Jain, 2003 (1) RCR (Rent) 558.

25. In view of the above discussion, I do not fall in line with the reasoning of both the Rent Controller and the Appellate Authority and reverse both the orders.

26. The petition is allowed.

(RAJIV NARAIN RAINA)
JUDGE

13.12.2017
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Whether speaking/reasoned Yes

Whether reportable No