

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.3778 of 2017 (O&M)

Date of decision: 25.05.2017

Dalip Singh

....Petitioner

Versus

Mukhtiar Singh

...Respondent

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

Present: Ms.Alka Chatrath, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') is directed against the concurrent findings dated 10.01.2017, passed by the Rent Controller, Batala, which have been upheld by the Appellate Authority, Gurdaspur, on 21.04.2017, on the grounds of *bona fide* requirement, for the need of the respondent-landlord, who has retired from the Education Department and also for the need of his son.

Counsel for the petitioner has vehemently argued that there were other premises available and therefore, the need set up, as such, was not *bona fide* and it was a mere greed.

A perusal of the record would go on to show that eviction was sought from the shop in question, shown as ABCD in the plan which was in possession of the petitioner as a tenant at a monthly rent of Rs.650/-, on the basis of a rent note dated 09.06.2003, which was exhibited as Ex.A2. It is alleged that due to a family partition, the shop had fallen to the share of respondent-landlord who has got one son Bikramjeet Singh, one daughter Amandeep Kaur and daughter-in-law, Mandip Kaur. Bikramjeet Singh was doing business of pesticides, seeds and fertilizers in a shop situated at

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Batala Road, which shop was at a distance of 2/3 kms. from the main bazar whereas the shop in dispute was located at a main bazar near bus stand. On account of that, the applicant wanted to shift his business along with his son in the shop in dispute which was located in the main bazar. It was further submitted that he did not have in his possession any similar accommodation within the municipal limits of Fatehgarh Churian nor he had vacated any such premises without any reasonable cause.

The same was contested on the ground that the rent was being received at Rs.925/- per month and it was denied that the landlord was idle after his retirement and the son was well settled and was doing business at Batala Road. The distance was also denied from the main road.

Resultantly, keeping in view the evidence which has come on record in the form of 2 witnesses of the respondent-landlord and 3 witnesses of the petitioner-tenant, a finding was arrived at that the shop was in the main bazar at a distance of 50 meters from the bus stand, which was taken on rent in the year 2003. Thus, eviction was being sought on 03.08.2015 after a period of almost 13 years and the need of the landlord was on the ground that the shop in possession of the son was not suitable and was at a far-away distance. In such circumstances, the argument which has been raised that there was any concealment, as such, is not justified. In fact, the landlord was very fair and categorical regarding the demand and the premises already in his possession. The documents which were produced to show that the landlord was in ownership of other land was rightly repelled by placing reliance upon the

judgment in Arjun Dass Vs. Smt.Birinder Kaur & another 2013 (3) RCR (Civil) 156 that ownership was not the criteria but possession as per the mandatory ingredients provided under the Act for the safeguard of the tenant. Resultantly, it was held that there was no *mala fide*, as such, in the application of the landlord whereby possession was being sought.

The Appellate Authority has also examined the issue threadbare and taken into consideration that even the respondent-landlord had admitted that the shop was being run by him in a residential area whereas the tenanted premises are in the market, at a distance of 10-20 meters from the bus stand. Therefore, the requirement for the premises in question has been held to be a *bona fide* requirement. The basic principle has been kept in mind that the landlord is the best judge of his need and that the tenant is not to dictate as to how the landlord is to use the premises, eviction has been ordered.

Nothing has been shown, as such, that the findings recorded are not justified in the facts and circumstances, apart from the argument raised that a sale had now been done during the pendency of the appellate proceedings, vide sale deed dated 20.04.2016 (Annexure A1), by the landlord which has now been placed on record. Firstly, the same was never placed on record before the Appellate Authority though it was executed a year before the decision and secondly, a reading of the same would go on to show that it was a plain site, which was land measuring 3 ½ sq.mts. No shop, as such, has been sold which could demonstrate the fact that there was any *mala fide* intention or there was available accommodation with the landlord which he had concealed.

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In such circumstances, the orders passed by the Courts below warrant no interference by this Court, in the revisional jurisdiction and the present revision petition is dismissed in limine. However, in view of the old tenancy, the tenant will not be evicted from the premises in question, till 30.09.2017.

25.05.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*