

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

**Civil Revision No.618 of 2007 (O&M)
Decided on : 22.05.2017**

Ramesh Chand and another

... Petitioners

Versus

Bhagwan Dass (deceased) through his L.R. and another

... Respondents

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

Present : Mr. Harsh Aggarwal, Advocate
for the petitioners.

Mr. Aakash Singla, Advocate
for the respondents.

G.S. Sandhawalia, J.

The landlord is aggrieved against the order of the Rent Controller, Sangrur dated 17.05.1996 and the order dated 22.04.2006 passed by the Appellate Authority, whereby eviction has been declined on the grounds of cease to occupy, in spite of the fact that it was noticed that the electricity connection had been disconnected in the premises in dispute and there was no water connection in the premises for the last five years, before the date of the filing of the application i.e. 05.09.1988.

The denial of bonafide requirement was also on the ground that the property is a commercial property and therefore, could not be used for residential purpose. Similarly, on the grounds of nuisance also whereby eviction was sought, the reasoning given by the Rent Controller was merely because trees were standing in the suit land would not constitute any nuisance and photographs had shown that premises were not in good

condition, but nuisance must be of frequent and unusual character and, therefore, mere breaking open of the gate and the entry of some cattle would not be as such of a nuisance to the occupiers of building in the neighbourhood.

The said findings have been given the stamp of approval by the Appellate Authority, who also further noticed that the Clerk of the Municipal Committee, Sangrur had appeared as PW-3, who had admitted that the a complaint was made by *Mohallawalas*, but on account of the no action having been taken by the Executive Officer, the findings as such had been upheld. Resultantly, an application for leading additional evidence under Order 41 Rule 27 CPC was moved and the same was dismissed on the grounds that the said facts were in knowledge as such and the documents were very much in the knowledge of the tenant/applicant, while leading evidence. Even on the issue of non-occupation, it was found that it was rented land and not a building and, therefore, the same could not be got vacated on the ground of non-occupation.

A perusal of the record would go on to show that the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') was filed for eviction of the respondents from the premises marked as ABCDEFGHJK shown as red colour in site plan, appended as (Annexure A). The house of Naurata Ram is situated on the eastern side of the premises and the petitioners are sons of Naurata Ram. It was alleged that earlier sons of Dr. Ujjagar

Singh were the landlords and respondents were occupying the same tenants. On account of purchase on 26.06.1981, the petitioners have become the landlords and stepped into the shoes. Resultantly, the petition which was instituted on 05.09.1988, which was on account of the arrears of rent from 01.07.1981 and the fact that the premises had been ceased to be occupied for more than 4 months without reasonable cause. The main gate was lying broken and leaves had been embedded in heap of malba and rubbish and it was not in working order. There was a heap of malba and rubbish around the gate and northern-western corner of the premises and shrubs and grass were growing and premises were not being used. The premises were also required on the ground of bonafide requirement, which is sufficient for the accommodation of the entire family. The respondents were guilty of nuisance due to heaps of rubbish lying in the premises and due to originating of bad smell of the same alongwith urination of account of passers by urinating in general.

Respondent No.1 took the plea that he was a tenant in the premises, but his son Madan Gopal was not and he was visiting the premises sometime. The petitioners were landlord and arrears of rent had been denied and it had been mentioned that they had tendered the rent in the Court and the same was accepted. The plea taken was that it was wrong that respondent No.1 cease to occupy the premises for the last 5 years. The premises had been leased for storing goods, which was stored in the room as well as in the open ground. The showroom of the respondent was in Dhuri Gate Bazar, Sangrur and it was denied that

rubbish was stored there and main gate was a old one and the landlord had not effected the repairs of the same. It was further alleged that the premises were not residential and could not be required for residential purposes. The petitioners were residing with their father in their ancestral house and they were in occupation of a residential building. The allegation that there was a nuisance to the occupiers of building in the neighbourhood as no rubbish was lying in the premises was also refuted on the ground that the same was lying in the adjoining street and people were urinating in the street and not in the premises in question.

Respondent No.2, the son took the plea that he was not a tenant and not in occupation and he had been wrongly impleaded with malafide intention.

In the replication filed to the written statement of respondent No.1 the plea by the petitioners taken was that the respondent-Madan Goptal had taken the open land at annual rent of ₹1,000/- and rent note dated 22.10.1968 had been executed. The land was taken on rent for running a Coal Depot by Madan Gopal and lateron Bhagwan Dass used to work there and, therefore, he had been arrayed as respondent. He was not a tenant, but since he had joined his son Madan Gopal and, therefore, he had been treated as tenant alongwith his son. Photocopies of the rent note executed by Madan Gopal were attached. It was further pleaded and denied that the building in dispute was taken for storing goods. A Local Commissioner had been appointed and since the respondent had come to know about the appointment of the Local Commissioner they had placed

some empty boxes, gunny bags etc. in the open ground to show that the premises were still being used. The condition of the premises as such was reported by the Local Commissioner, Shri Shamsheer Singh, a retired Overseer. The rented land could be got vacated for the personal use of the landlords as they were living in the house owned by their father.

Similar, replication was filed to the written statement filed by respondent No.2 to the fact that he was a tenant as per the rent note and, therefore, could not deny the relationship of landlord and tenant. The following issues were framed by the Rent Controller on 11.01.1989:-

- “1. Whether there is relationship of landlord and tenant between the parties? OPA*
- 2. Whether the respondents have made valid tender? If not, its effect? Onus on parties.*
- 3. Whether the respondents have ceased to occupy premises in dispute for a continuous period of four months as alleged? If so, its effect? OPA*
- 4. Whether the applicants required the premises for their own use and occupation? OPA*
- 5. Whether the respondents are guilty of nuisance? If so, its effect? OPA*
- 6. Relief.”*

As many as 12 witnesses were examined by the petitioners, whereas the respondents examined as many as 10 witnesses. In view of the admission of deceased respondent No.1-Bhagwan Dass and also keeping in view the rent note Ex.AW4/A that Madan Gopal was a tenant in the premises, the Rent Controller came to the conclusion that the petitioners were the landlords and resultantly decided the said issue in favour of the petitioners. Similarly, in view of the tender having been

made, the issue was held not proved regarding the arrears of rent. On the ceasing to occupy, it was noticed that a report had come by ASI Sadhu Ram for the premises in question. There was a report of Inspector Gurkirapal Singh that the premises were lying vacant and the wooden gate was lying broken and bushes and trees had grown up. One Ramesh Goyal had filed an application addressed to the SSP, Sangrur in this regard. The water connection was lying disconnected, since December, 1988 on account of non-payment of water charges and also residents of the *Mohalla* had moved an application that the premises were not fit. Mam Chand-AW5 also appeared and deposed that premises in question were lying dirty and the dirt was being thrown at there. AW6-Shamsher Singh also appeared to say that malba and rubbish were lying in the suit property and gate was also embedded in the malba and the premises in dispute were lying vacant for the last 7-8 years. Photographs of the premises Ex.AW9/1 to Ex.AW9/24 depicted the condition of the premises which were exhibited by AW9-Om Parkash. The site plan was proved by AW10 Navtej Singh as Ex.PW10/1 and the negatives were also proved by AW11 Sham Lal. The factum of the premises not having electricity or water connection was accordingly noted, though a finding has been recorded that there was no godown and the building had been constructed later on, which fact had also been mentioned in the replication. Keeping in view the principles of Section 13 (3) (i) (ii) of the Act, the property being not a residential property, it was held that it could not be got vacated for the said purpose on that

account.

Similarly, under issue No.4 it was held that the property was rented for commercial use and could not be used for residential purpose and reliance was accordingly placed upon the judgment passed in '**Harparkash Kaur Vs. Bansi Lal 1979 (2) RLR 182.** A finding was recorded that the applicant having rented the property being land for the commercial propose, the same could not be vacated for residential purpose. Similarly, on issue No.5 it was held that the photographs submitted were taken from various angles were quite sufficient material to show that wooden gate was open and sand and rubbish was also present in the property in dispute. There was a iron box and wooden box lying there and, therefore, as per photographs it could not established that the premises in dispute were not in good condition and merely because the photographs were annexed to show that the grass and plants had grown up, it was held that nuisance must be of gross character. The breaking open of the main gate and growing of grass and trees and the entry of some cattle and no official of the Municipal Committee, Sangrur having been examined led to the petition being dismissed.

In the appeal an application for amendment of pleadings was filed which had been made in the replication that the word open land had been wrongly mentioned and it should have been as premises in dispute. The application was rejected by the Appellate Authority on 18.07.2001 and resultantly, **Civil Revision No.4125 of 2001** was filed by the landlords which was allowed on 16.03.2004 by holding that it was a

common case of the parties that demised premises was a building and tenants also claimed that some land was attached to the building. Resultantly, the landlord was allowed to file a amended replication.

The Appellate Authority while deciding the appeal and cross-objections noticed that the amendment had been made, wherein the words were described as it had been described as 'premises in dispute' and no evidence as such had been led and came to the conclusion that one room was tenanted and a Coal Depot was running and 90% was open compound and, therefore, tenants could not be evicted on the ground of non-occupation of continuous period of 4 months. The findings on the issue No.3 were upheld and similarly the findings on the lack bonafide requirements for residential purpose were also upheld on the same reasoning. The finding on the issue of relationship was upheld, while upholding the finding under issue No.5 by noticing that nuisance must be of a gross and persistent character, where it was not possible for neighbours to live a normal life.

From the above factual matrix one thing is apparently clear that the rented premises were as such not being utilized for the purpose they had been taken on rent and an application was filed by the *Mohallawalas*, which was duly proved by the Clerk-Prem Sagar, who had appeared as AW-3 and held that the area was a open ground and grass, trees and bushes had grown up and it looked like a forest and there was a bad smell of rubbish, which was also noticed by the Appellate Authority. On the complaint, Ex.AW3/3 filed by one Ramesh Goyal no action had

been taken by the Municipal Committee. The statement of Pawan Kumar AW-1 would go on to show that the complaint was received in the office of SSP, Sangrur on 20.09.1989 and a report had been made by ASI Sadhu Ram, Ex.A2 and similarly one inspector Gurkirpal Singh had given his report Ex.A3. It was also admitted by the said witnesses that no action had been taken on the basis of said applications.

Similarly, a perusal of the statement of AW-5 Mam Chand the neighbourer would go on to show that he was residing near to the premises in question and the premises were lying vacant for the last 8-10 years and no business were carried out. The wooden gate was not in working condition and heaps of rubbish were lying near the gate and residents of the *Mohalla* had got removed the refuse material by spending their own funds. Persons passing by were urinating there and sweepers had thrown the dirt in the plot. He had moved two applications for the removal of the refused material and one application also given to the Executive Officer, Municipal Committee, Sangrur and one application to the SDM, Sangrur. He had identified his signatures on the application Ex.AW3/3. He has stated that Madan Gopal got cleared the premises by engaging labour about 10 years ago and that there was a electricity connection in the premises, but now there was no electricity connection.

Similarly, the statement of Shamsheer Singh AW-6 the draftsman would also go on to show that the gate of the premises was in broken condition and leaves of the gate were embedded in the malba and rubbish. He had also prepared site plan Ex.AW6/1, in which he had

given marginal notes and he had deposed that the premises in question were lying vacant since long. The report had been prepared by him on 26.08.1988, after he inspected the premises a day earlier and photographs were marked as X1 to X14 relating to the premises. The grass was growing upto 2 feet height on the room occupied by the petitioners and he had stated that cows and pigs were moving in the premises, which was a vacant plot surrounded by residential premises.

A perusal of the site plan would also clearly depicted that there was malba including behind the house of Mam Chand AW5, who had appeared as a witness. Even in the site plan incorporated the fact that pigs and cows were grazing at the time of inspection and there was a bad smell of urine. There was a plenty of grass with wild plantation and shrubs in addition to the trees mentioned alongwith human excreta scattered at many points in the site plan. The site plan shows that the house of the present petitioners abuts the plot in question.

It is, thus, apparent that the petitioner and Mam Chand themselves were aggrieved staying in the adjoining building of the nuisance aspect, which the tenants are guilty of. Apparently the premises were not being used on regular basis as there is no electricity connection and water connection in the premises in which a room was constructed in the leased out premises.

Similarly, one Prem Kumar, AW-8, shopkeeper in his statement had stated that his residence was adjoining to the site in dispute and in the same *Mohalla* and he had also stated that stray cattle, cows and

pigs were moving inside of the premises and people used to throw filth in inside and outside which was spreading smell. Apart from that passersby's were using the area for easing themselves and it was creating a nuisance for the neighbours. About 2-3 years back the respondent had got cut the trees and premises were cleared. Thereafter, 6-7 months ago residents of *Mohalla* had got the rubbish removed at their own expenses. He identified the signatures of his father, namely, Kapoor Chand on Ex.AW3/3, which had been moved to Municipal Committee, Sangrur. He further deposed that premises in question is surrounded by residential houses and in cross-examination stated that he had come to depose as his father had directed to appear and he could not come as he was unwell. In the cross-examination he further stated that the room was always lying locked.

The statement of Navtej Singh-AW10, the draftsman would also go on to show that as per the site plan prepared by him Ex.AW10/1 on 16.07.1991, he inspected the house of the petitioners and depicted the portions which were in their possession. He had deposed regarding the fact that the malba which was lying in the site plan Ex.AW10/2 was on the backside of the house of Naruata Ram and the premises are not being used for the last many years.

The photographer Sham Lal who appeared as AW11 and AW9 Om Parkash who had also taken photographs of the premises in dispute on several occasions had proved the photographs and the broken gate. The perusal of the said photographs would also show that the pigs

were moving freely in the plot in question and the gate was lying broken and the cows were also grazing. Other photographs were also showing heavy growth of grass and rubbish thrown in the plot and also workers clearing the premises which was also stand of the witnesses that on account of the complaints the premises as such had been cleared.

As noticed it has already come on record that the room was already lying locked and not utilized without any electricity or water connection. The factum of even witnesses of the respondents have deposed to this effect, which would be clear from the statement of RW1, who was the servant of the respondents, who had also been challaned under Sections 107 and 151 Cr.P.C. in a private complaint instituted by the petitioners. He also admitted that the electricity connection in the premises was disconnected and there was no water connection, since he had joined as a servant. He also admitted that there is no Coal Depot being run by the respondents in the premises in dispute which is surrounded by residential houses on three sides.

Similarly, the statement of RW2, Shashi Pal Garg would go on to show that the respondents stored their medicines in one room in the disputed property but the remaining was a vacant plot. He had also admitted that Madan Gopal son of respondent No.1 had shifted to Rajasthan and was residing there and was not residing at Sangrur.

Ashok Kumar, RW5 in his statement also deposed that Madan Gopal also used to sit in the premises that was used for a Coal Depot before his departure to Jaipur and where he started his business.

He admitted that the site in dispute was lying vacant and premises were not being used for the last 12-13 years and neither there was any Coal Depot for the last 15-16 years. The factum of people using the premises for easing themselves and throwing rubbish was also admitted by him. His shop was situated at a distance 15-16 shops away from the premises in question.

Keeping in view the above cumulative discussion and the fact that even the authorities below have noticed the fact that there is no usage of the premises in question and on account of non usage a nuisance had been caused to the residents of the area. The specific ground for eviction as such which was thus sought under Section 13 (2) (iv) of the Act that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood of the premises on account of not keeping the premises in a fit condition stood duly proved. The said provisions read as under:-

“13. Eviction of tenants-- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section, 1[or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied "

xxxxxxxxxxxxxxxxxxxxxxxxxxxx

(iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood”

There was sufficient material as such, specially keeping in view of the fact that there is no electricity or water connection and the son of the respondent No.1 had shifted himself to Jaipur, which has further led to the premises being in a state of total disaray.

Accordingly, in the facts and circumstances, the findings which are recorded on issue No.5 that no nuisance has been caused is not tenable and is liable to be reversed. The authorities below have discarded the vital evidence of the petitioners, who themselves being landlords but also are neighbours are adversely affected apart from ignoring the evidence of Mam Chand and Prem Kumar son of Kapoor Chand. The authorities below failed to noticed that his father Kapoor Chand had also made a complaint and the tenants had been forced to clear the premises, which had also come on record in the statement of the witnesses of the tenants. It has further come in evidence that the same was a temporary relief as such which was granted to the residents of the area and the nuisance which was of gross and persistent character was, thus, brushed under the carpet by the authorities below by not ordering eviction on the said ground. The authorities below were not justified in holding that the nuisance was not of a consistent character. The said element is to be adjudged from the view point of the persons who are residing in the said neighbourhood and who are duly effected on a daily basis which factum has been ignored by the Courts below, in spite of the voluminous

evidence both in shape of oral and documentary in nature having been brought on record.

Resultantly, the present revision petition is allowed to the extent that the petitioners have been successful to prove the issue and brought on sufficient material on record regarding issue No.5, which pertains to the nuisance which was created to the nearby occupants. Accordingly the respondents are directed to be evicted from the premises in question by allowing the present revision petition.

MAY 22, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No