

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

CR No.507 of 2013 (O&M)

Reserved on:21.02.2017

Date of decision:21.03.2017

Narinder Kumar Prashar & another

...Petitioners

Versus

Bhagwan Dass Sood Charitable Trust

...Respondent

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

Present: Mr.Anupam Gupta, Sr.Advocate
with Mr.Ashok Kumar, Advocate, for the petitioners.

G.S. SANDHAWALIA, J.

The present revision petition, filed under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') is directed against the concurrent findings recorded by the Courts below whereby eviction has been ordered from the premises in question on the ground of change of user. The Rent Controller, Hoshiarpur directed eviction on 09.10.2009, which was upheld in appeal by the Appellate Authority on 12.10.2012.

Learned Senior Counsel for the petitioners has submitted that Bhoopa Sood, Secretary of the Trust, was not duly authorized and therefore, the proceedings, as such, were not validly instituted by him. Also that the title of the Trust, as such, was not clear and therefore, the authorities below were not justified in ordering eviction. It is his contention that even the original trust deed had not been produced by the said witness and it has come in evidence that the same had been lost. It was argued that the respondents had given their implied consent for raising the construction in the premises and therefore, they were estopped, as such, from seeking eviction on the said ground. The construction had been raised since 1978 and therefore, eviction was not justified on account of change of use.

A perusal of the record would go on to show that the eviction petition was filed on 20.09.2000 by the Trust through its Secretary namely, Bhoopa Sood, who was examined as PW10, alleging that the Trust was a registered body and there was a resolution dated 31.07.2000 in favour of the Trust, which was duly attached. The boundaries of the property were mentioned and it was averred that Mohan Lal, father of petitioner No.1 had been rented out the property @ Rs.125/- per year for running a firewood stall (Tal). Thereafter, on account of his death, the tenancy rights were inherited by the present petitioner No.1 and therefore, there existed the relationship of landlord-tenant. Eviction was sought on account of arrears of rent for the last 10 years; that construction had been raised of 3 shops, 2 rooms, a store and shed, without consent and therefore, material alteration had been done and the property had been materially impaired; the property had been rented out to respondent No.2 and thus, had been sublet, who had started running the business of deluxe bakery in the shop and no consent had been taken; and change of user was also alleged.

In the written statement filed, the relationship of landlord-tenant was denied and that the Trust was not the owner of the property. The existence of the trust deed was challenged and that the property had ever been made subject of the alleged Trust. The authorized person was a stranger, set up by some persons to grab the property and no payment had been made of any rent. Directions had been issued by the Court to produce the trust deed and in the same, there was no mention of the property and even the site-plan was challenged, that boundaries were wrong. However, the factum that the

father of petitioner No.1 had been running the business of fire-wood stall in the property in dispute, was admitted. The rent had been tendered in the Court under protest and it was denied that his father had taken any property on rent from the Trust. The right to recover the rent tendered, was put-forth. The construction had been raised in the shape of shops, rooms, store and shed by the father wayback in 1978-79 and the building plan had also been got sanctioned from the Municipal Committee, Hoshiarpur and construction had been raised. It was denied that there was any diminishing of the value and utility of the property rather it had increased. The father of petitioner No.1 was in possession of the property in dispute since 1960 when the same was in the shape of deep pits and he had levelled the same by filling earth in the same and nobody had ever objected or raised a little finger to the acts of the father of petitioner No.1. The Trust was, thus, estopped from raising this objection. The factum of petitioner No.2 running the business of deluxe bakery in partnership with petitioner No.1 was admitted, by taking the stance that he had the right to let out the shop and raise construction over the property in dispute. If the respondent-Trust succeeded in establishing the title, even then petitioner No.1 had every right to let out the shops and raise construction. The change of user was also denied and it was pleaded that father of petitioner No.1 was running the business of fire-wood stall but it was not denied that petitioner No.1 was running the business of fire-wood stall in the property in dispute.

In the replication filed, plea taken by the respondent-Trust was that the revenue record showed the factum of tenancy. A Civil Suit had been

filed by the petitioner against one Rakesh Kumar Nagra, which was decided on 22.09.1997. The title of the Trust could not be denied. Reference was made of the declaration made in the year 1967 by Bhagwan Dass at Bombay that he had purchased the property with the money of the Trust and it stood in his name as benamidar and he had no objection if it was transferred in the Government record in the name of the Trust. The authorized person, Bhoopa Sood was son of Ram Lal Sood, son of Bhagwan Dass Sood and there was no question of grabbing the property and the Trust being fictitious in any manner. The certified copies of the trust deed were also produced. Mention of the property under the Trust may not have been there but the tenant could not deny the title and he was also estopped from doing so since he admitted the same in an earlier litigation. The right to raise construction was repelled and that the value of the property had increased. Petitioner No.2 was stated to be a sub-tenant and the story of partnership was also denied. The construction had been raised by the petitioner No.1 and not by his father and he was a tenant under the Trust. It was denied that any construction was raised during the life-time of the father and all the constructions had been done recently. The use had been changed from running a fire-wood stall and resultantly, eviction was sought.

The Rent Controller framed the following issues:

- 1) Whether there exists relationship of landlord and tenant, between parties? OPA
- 2) Whether present petition has been filed by duly authorized person? OPA
- 3) Whether tender made on 16.11.01 is short and invalid?

OPA

4) Whether respondent No.1 has impaired value and utility of demised premises? OPA

5) Whether respondent No.1 has sublet demised premises to respondent No.2 without consent of applicant? OPA

6) Whether respondent No.1 has changed user of demised premises? OPA

7) Relief.

As many as 10 witnesses were examined by the Trust to prove its case and the revenue record was brought on record, in the form of jamabandi for the year 1962-63 as Ex.A5 and for the year 1977-78 as Ex.A6, apart from the judgment dated 27.03.1973 in the suit titled *Punjab Wakf Board vs. Mohan Lal* as Ex.A8, in which, the respondent was father of the present petitioner No.1.

The tenant-petitioners examined as many as 7 witnesses.

Ex.A8 was rightly taken into consideration by the Rent Controller, to notice that father of petitioner No.1 had taken a specific stand that he was a tenant under the respondent-Trust since 1960. A perusal of the said document would go on to show that the Wakf Board was seeking possession of 3 kanals 13 marlas of land bearing khasra No.1369, situated at Bahadurpur, Hoshiarpur (near Simla Pahari), after demolition of the superstructure, in the Civil Suit filed on 02.01.1971. It was alleged that the property in dispute was a Takia and a Mosque and was Wakf in nature and therefore, the suit had been filed. The defence of father of petitioner No.1 was that he was tenant in the premises in question under Bhagwan Dass Sood, grandfather of the Secretary since 1960. It was alleged that the said

Bhagwan Dass was necessary party and that the suit was not maintainable. Issue No.4 was also framed to this effect. The non-payment issue was, thus, decided against the landlords, on account of the tender made.

Under issue No.3, whether the property in dispute was Wakf property, it was held that there was no evidence that the land in dispute was Wakf property. Jamabandi for the year 1962-63 was taken into consideration to hold that 3 kanals 13 marlas of land was in the ownership of the present respondent-Trust and resultantly, it was held that it being the owner, it was necessary for the plaintiff to join him as a defendant and the suit was, thus, dismissed.

Thus, it is apparent that father of petitioner No.1 had been successful in repelling the suit for possession on the ground that he was a tenant in the premises in question under the Trust and now, petitioner No.1 cannot turn around and question the very tenancy, keeping in view the provisions of Section 116 of the Evidence Act, 1872. It is also apparent from Ex.A4 wherein in view of the declaration dated 03.08.1967 by Bhagwan Dass that he had transferred the land in the ownership of the Trust and was claiming no interest if the property was changed in the name of the Trust instead of his name and the property be transferred in the Government record. In the jamabandi of the properties, it was mentioned that it was vacant land measuring 3 kanals 13 marlas situated at Bahadurpur, Hoshiarpur (near Simla Pahari) falling in Khasra No.2523-1369, which was bought for the Trust for about Rs.12,000/-, 17 years ago. Another set of properties which was leased out to the State Bank of India, was also mentioned. This declaration was

presented and registered in the office of the Sub-Registrar on 31.08.1967, which had also been duly considered by the Courts below.

The argument raised by the Learned Senior Counsel that there was dispute, as such, regarding the title, in view of the estoppel which is there under Section 116 of the Evidence Act, 1872 does not cut much ice with this Court. The consistent stand of the petitioners is that they are tenant and having got the benefit of protection of the said tenancy, now, cannot turn around and question it 30 years later, on the filing of the eviction petition. The reasoning given by the Rent Controller that there was resolution signed in favour of Bhoopa Sood, who was a family member and therefore, he was duly authorized, as such, and it was not a fabricated resolution. It is not disputed that the said person is the grandson of Bhagwan Dass who had put the property in the melting pot of the Trust.

The Apex Court, while examining the said provisions in **Kamaljit Singh Vs. Sarabjit Singh (2014) 16 SCC 472**, set aside the orders passed by the Rent Controller, whereby the petition under Section 13-B of the East Punjab Urban Land Restriction Act, 1949 (for short, the 'Rent Act') was dismissed and upheld by this Court and directed eviction of the tenant. The premises consisted of a shop and building owned by a Non-Residential Indian. The Rent Controller had dismissed the petition on the ground that ownership of 5 years, before filing of the petition, was not proved since the sale deeds in question had not been co-related to the shops in question. The application for additional evidence filed along with the revision petition before this Court was dismissed, on the ground that it was within the

knowledge of the landlord and the lacuna could not be filled up. It was, thus, held that it was not the case of the tenant that he was the owner of the shop or that he had taken it from anyone else and once he had admitted that possession was there for the last more than 10 years, the Courts below were in error in dismissing the eviction petition. The relationship could not be challenged without surrendering the possession and the tenant could never ask the landlord for his title. Relevant observations read as under:

“15. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter’s title to the property. Section 116 clearly lends itself to that interpretation when it says:

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

16. A three-Judge of this Court in *Sri Ram Pasricha v. Jagannath and Ors.* (1976) 4 SCC 184 reiterated the principle that a tenant in a suit for possession was estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord, declared this Court, even otherwise irrelevant in a suit for eviction of the tenant.

The only exception to the rule of estoppel as stated in Section 116 (supra) may be where the tenant is validly attorned to the paramount title holder of the property or where that the plaintiff-landlord had, during the intervening period, lost his title to the property. We are not, however, dealing with a case where the respondent-tenant claims that the property is vested in anyone else who could be described as the paramount title holder or there was any extinction of the title of the appellant on any count whatsoever since the induction of the respondent as a tenant into the premises. We need not, therefore, be detained by any one of those considerations. What is important is that so long as a jural relationship exists between the respondent-tenant and the appellant and so long as he has not surrendered the possession of the premises in his occupation, he cannot question the title of the appellant to the property. The inevitable inference flowing from the above proposition would be that (*viz-a-viz* the respondent) the appellant was and continues to be the owner of the premises in question since the year 1992 when the respondent was inducted as a tenant. Reckoned from the year 1992 the appellant has established his ownership of the premises for a period of five years before the filing of the eviction petition thereby entitling him to invoke the provisions of Section 13-B of the East Punjab Urban Land Restriction Act, 1949.

17. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason

why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act.

18. The upshot of the above discussion is that the Courts below fell in manifest error in holding that the appellant/landlord was obliged to prove his title to the property, no matter the tenant clearly admits the existence of jural relationship of landlord and tenant between him and the appellant. We have, in the circumstances no hesitation in reversing the view taken by the Courts below and in decreeing the eviction petition.”

Thereafter, in **Hindustan Petroleum Corporation Vs. Dilbahar Singh (2014) 9 SCC 78**, it was held by the Apex Court that in the absence of any procedural illegality or infirmity in the orders impugned, there is no scope for any interference and that the High Court is not to sit as a second Court of first appeal. Relevant observations read as under:

“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in

gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

The said view was, thereafter, been reiterated in **Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others 2016 (3) SCC 343**, in which also, reversal of the decision of the Appellate Authority by the High Court was not appreciated and it was held that once the tenants could not prove any title, as such, eviction was justified. Relevant observations read as under:

“19) It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by Rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to

retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (vide [Sheela & Ors. vs. Firm Prahlad Rai Prem Prakash](#), (2002) 3 SCC 375).

20) Coming now to the facts of this case, keeping in view the principle of law laid down in the aforementioned two cases and on perusal of the order of the first appellate Court, we find that the first appellate Court properly appreciated the facts and evidence adduced by the parties and on that basis recorded all necessary findings (detailed above) in favour of the appellants. This the appellate Court could do and, in our opinion, rightly did in the facts of this case.

21) Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of Hindustan Petroleum Corporation Ltd. (supra) while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.

22) That apart, we find that the appellants were able to prove

their ownership through their predecessor-in-title on the strength of sale deed (Ex-P.6/7) of the suit premises whereas the respondents failed to prove their defence. Indeed, the burden being on them, it was necessary for the respondents to prove that the sale in favour of the appellants' predecessor-in-title of suit premises was a transaction of mortgage and not an outright sale. Since the respondents did not adduce any documentary or oral evidence to prove their defence, the first appellate Court was justified in allowing the eviction petition. In our view, the evidence adduced by the appellants to prove their title over the suit premises was sufficient to maintain eviction petition against the respondents and it was, therefore, rightly accepted by the first appellate Court.

23) As observed supra, the first appellate Court having recorded categorical findings that the relationship of landlord-tenant was proved and secondly, the respondents had committed a willful default in payment of monthly rent and its arrears from 01.06.1987, these findings were binding on the High Court while deciding the revision petition. It was more so when these findings did not suffer with any jurisdictional error which alone would have entitled the High Court to interfere.”

Thus, the findings which have been recorded by the Courts below on issue No.1 are not liable to be interfered with in the absence of any violation of any legal principles or suffering from any procedural infirmity.

While deciding issue No.4, it was noticed that it was clear that the property was let out for the purpose of running the business of fuel-wood stall and making improvements in the same and raising construction had not, as such, impaired the value.

Similarly, under issue No.5, subletting was also held against the

landlord, as business was being done in partnership. Rather, there was an admission, as such, that petitioner No.2 was in partnership and the Rent Controller had not discussed any of the evidence to show whether there was any exclusive partnership from the property in dispute and whether there was any such joint business but inspite of that, it was held in favour of the tenant, which, in the opinion of this Court, though it had not been contested, is not a justified reasoning. Once admission had been made that the said petitioner was in possession, it was for them to prove the fact that it was not exclusive and there is no discussion on the said issue, as such. However, in the absence of any challenge being raised by the landlord, the findings are not liable to be, as such, disturbed.

The crucial issue was whether the change has been there of the user of the premises, the plea was that there was no written rent note but the Rent Controller went on to hold that construction had been raised after the death of the father and the sanction was sought, for the first time, in 1978, to raise construction. It was, accordingly, held that there was change of user as an admission was there that the father was using the property for fire-wood stall. The Appellate Authority has upheld the findings, as discussed above, vide order dated 12.10.2012.

It has also been discussed that in a suit for permanent injunction, filed by petitioner No.1, against one Rakesh Kumar Nagra, it had been again pleaded that the property in dispute falling on khasra No.2523/1369 was on lease with Mohan Lal. The site-plan and copy of jamabandi for the years had also been attached for proof. Petitioner No.1, being the plaintiff, had

succeeded to the tenancy rights and was in possession and was running a fire-wood stall and deluxe bakery and resultantly, injunction had been sought against the said defendant. It has been noticed by the Appellate Authority that the document is marked as Mark-B, on account of the fact that there had been a fire incident and the record had been burnt. The landlord had produced AW4, Tarsem Lal, Clerk of one of the counsels, to show that the suit had been filed through one Tikshan Sood, Advocate and the relevant diaries and briefs maintained, were also exhibited as AW4/A. Similarly, Balraj Kishore, one of the junior Advocates, had also been examined to prove that the suit had been filed, which was dismissed on the statement of counsel for the defendant, since the original record was not available. It is also pertinent to mention that Special Assistant, State Bank of India was examined as AW6, to show that rent was being sent to the Trust @ Rs.455/- per month of the other set of properties which were mentioned in the declaration dated 03.08.1967. In view of the stand of petitioner No.1 also that the property had been constructed upon, it is, thus, apparent that there is a change of user, which has also been admitted by father of petitioner No.1 and it is the admitted case that construction had been raised on the property in the form of residential and commercial buildings and thus, there is a change of user. All these factors would go on to show that the findings, as such, which have been recorded by the Courts below regarding the relationship and change of user, are well justified. The argument which has been raised by Learned Senior Counsel, questioning the title in the proceedings under the Rent Act, are, thus, without any basis, keeping in view the above settled principles discussed in the

referred case law.

Accordingly, keeping in view the above discussion, this Court is of the opinion that there is no scope for interference in the well reasoned orders passed by the Courts below under revisional jurisdiction, in the absence of any procedural infirmity. Resultantly, the present revision petition stands dismissed.

March 21st, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*