

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

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**CR No.617 of 2017 (O&M)
Date of decision: 31.01.2017**

Gulzari Lal (deceased) th. his LRs

....Petitioners

Versus

Jai Hanuman Mandir Bangru Welfare Committee
th. its Cashier Ramesh Kumar @ Kala

...Respondent

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

Present: Mr.Animesh Sharma, Advocate, for the petitioners.

G.S. SANDHAWALIA, J. (Oral)

Present revision petition has been filed by the petitioner-tenants, aggrieved against the concurrent findings of the Courts below on the ejectment petition, filed by the respondent-landlord, which is a religious society, qua shop No.5, whereby eviction has been ordered on the ground of *bona fide* requirement that the society, as such, wants to demolish the same and create parking space and also on the ground of being unfit and unsafe for human habitation.

Counsel for the petitioner vehemently submits that the petitioners had been inducted as a tenant, as such, by one Bishan Dutt, who was the President of a different society and therefore, there was denial of the relationship of landlord-tenant *inter se* and that eviction was not justified, in the facts and circumstances. It was also argued that in another case, decided on 17.12.2014, instituted by the respondent-Committee (Ex.R9 equivalent to Annexure P2), the eviction petition against Sarwan has been dismissed by the Rent Controller, Jalandhar and thus, on account of dispute pending between the 2 societies in the form of the civil suit, the present eviction order was not justified.

The eviction petition had been filed through the Cashier-Ramesh Kumar, on the ground that the petitioners had been inducted as statutory tenants around 40 years ago, at a monthly rent of Rs.500/- and on the basis of a resolution passed by the Committee. It was alleged that there was material impairment which had diminished the value and strength of the shop in question which was constructed about 60 years back and the same had become unfit and unsafe and the respondent had tried to increase the area in question. The *locus standi* of the respondent-landlord was questioned on the ground that the petitioners, who are the legal heirs of Gulzari Lal had no relationship and that the petition had been filed against the dead person, namely, Gulzari Lal. It is alleged that one Bishan Dutt, who was the President of the Hanuman Mandir Bangru Committee had been collecting rent and other allegations were denied.

The Rent Controller framed the following issues:

1. Whether there exists relationship of landlord and tenant between the parties? OPP
2. If issue No.1 is proved in affirmative, whether the respondent has made structural changes in the demised property without the consent of petitioner? OPP
3. If issue No.1 is proved in affirmative, whether the respondent has made material alterations in the shop in dispute without the consent of petitioner? OPP
4. If issue No.1 is proved in affirmative, whether petitioner required the demised premises for his own use and occupation? OPP
5. Whether the petition is not maintainable in the present form? OPR
6. Whether the petitioner has no locus-standi to file the present

petition? OPR

7. Whether the site plan filed by the petitioner is incorrect? OPR

8. Whether the petitioner has got no cause of action to file the present petition? OPR

8(A). Whether this court has got no jurisdiction to entertain and try the present petition? OPR

9. Relief.

The respondent-Management examined Ramesh Kumar as PW1 and the Building Expert, Shri R.K.Verma as PW2, who submitted his report as Ex.PW2/A. Bishamber Dass was examined as PW3, who also placed on record another ejectment order dated 25.09.2014 (Ex.PW3/F) against another tenant, which had also been filed through Ramesh Kumar.

The Rent Controller decided the issue of ownership against the petitioner, on the ground that there was an admission that Bishan Dutt had leased out the property and he himself was a tenant in one of the shops of the management and therefore, keeping in view the provisions of Section 116 of the Indian Evidence Act, 1972 held that there was an estoppel against the tenant, as such, to deny the relationship and issue No.1 was decided against the petitioner-tenant. While keeping in mind the inspection report dated 24.08.2014 and while noticing that the opinion of the expert that the shop was unfit and unsafe and also the fact that Vipin Kumar, son of the tenant had admitted that initially the roof of the shop was constructed with wooden ballas which was removed by Bishan Dutt and the lintel wall had been placed thereafter. Accordingly, the Rent Controller came to the conclusion that there was material alteration and changes made, specifically, in view of the stand taken of material alteration in the shop without the consent of the

landlord.

On the issue of *bona fide* requirement, it was noticed that the petitioner needed the shop to construct a new hall and only on account of the fact that the landlord had other shops in its possession, the tenant could not dictate the terms and conditions to the landlord and therefore, the requirement was held *bona fide* for its own use and occupation and for the *bona fide* possession. The *locus standi* was held in favour of the landlord and in the absence of any evidence, issues No.7 & 8(a) were decided against the petitioners. Issue No.8 was decided in favour of the landlord and against the tenants on the ground that there was a cause of action and accordingly, ejectment was ordered on 13.07.2015.

The Appellate Authority examined the issue afresh and came to the conclusion that the petition had been preferred by a juristic person and therefore, even if there was a dispute regarding election of the Committee, as such, *inter se* and the Committee was now managing the affairs of the Management and the resolution had been signed by 25 persons and all the keys, cash and chques lying in the account, had been given to the new Committee, the tenant, as such, could not question the entitlement of the filing of the petition. Reliance was, thus, accordingly, rightly placed upon the judgment of the Apex Court in **Shiromani Gurdwara Prabandhak Committee Vs. Som Nath Dass (2000) 4 SCC 146** wherein it has been held as under:

“12. Thus, it is well settled and confirmed by the authorities on jurisprudence and courts of various countries that for a bigger thrust of socio-political-scientific development

evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living, inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church, hospital, gurudwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such.”

It was also noticed that Bishan Dutt himself was a tenant in shop No.9, owned by the Management and even the tenant was in arrears of rent, as per his own admission. While examining the report of the Building Expert, it was noticed that the earlier roof of wooden ballas were replaced with lintel by Bishan Dutt and therefore, in the absence of his cross-examination, the best evidence had been withheld and therefore, an adverse inference was drawn against the tenant. Keeping in view the fact that there was a *bona fide* necessity, as such, of the landlord as it required the premises for installation of a big gate and to demolish the shop as there was open space at the back of the shop, to construct 'Ram Hall', the evidence of personal necessity was noticed.

It is a matter of record that the eviction petition filed against a similar tenant had been allowed on 25.09.2014 (Ex. PW3/7) on the same ground. The infirmity which had been made by not impleading the legal heirs of the deceased, had been cured by filing an application for impleading them, with the permission of the Court and which had not been challenged by the petitioner and has become final *inter se*. Keeping in view the above facts and circumstances, this Court is of the opinion that once the relationship of landlord-tenant, as such, was there with the Mandir, would not entitle the tenant, as such, to dispute the *locus standi* of the Committee. The area, as such, would not go to any person but to the Committee, which requires the same for *bona fide* necessity, to improve and to create a parking and a hall, which, on the face of it, is a *bona fide* genuine requirement. The finding regarding the material alterations by taking the alleged consent of the earlier

President also would go on to show that the ejectment on the said ground is justified. In such circumstances, the concurrent findings which have been recorded by the Courts below do not suffer from any infirmity or illegality.

Reliance upon Ex.R9 whereby the petition was dismissed qua another alleged tenant, namely, Sarwan, is without any basis. A perusal of the judgment would go on to show that Ramesh Kumar, who appeared as PW1, had deposed that Sarwan was appointed as a caretaker of the shop and was given the possession of the same, as such. In such circumstances, the relationship of landlord-tenant had not been proved and the petition was dismissed. Even otherwise, each and every case has to be examined and decided on its own peculiar facts and circumstances.

Resultantly, keeping in view the above discussion and the revisional powers of this Court and the fact that this Court is not sitting as a Court of appeal, finding no procedural illegality or infirmity in the orders passed by the Courts below, the present revision petition is, hereby, dismissed.

January 31st, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*