

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 105

CR-7357-2017 (O&M)

Decided on : 08.12.2017

Dr.Santosh Rattan

..... Petitioner

VERSUS

Dr.V.K.Gupta

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Namit Gautam, Advocate,for the petitioner.

. . .

DEEPAK SIBAL, J. (ORAL)

The respondent-landlord filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short the 'Act') before the Rent Controller, Rohtak seeking therein the ejectment of the petitioner-tenant from the tenanted premises fully detailed and described in the eviction petition.

The case set up by the respondent before the Rent Controller was that the tenanted premises had been rented out by him to the petitioner w.e.f. 01.01.1986 at a monthly rent of Rs.2,500/- which w.e.f. 01.01.2006 was enhanced to Rs.5,000/-. Since on 31.05.2004 the respondent had retired from Government service he wanted to shift and occupy the tenanted premises as on retirement he was required to vacate the Government accommodation which he was in possession of. It was further the case of the respondent that presently he alongwith his wife were residing with their married son and for that reason also wanted to shift with his wife to the tenanted premises where he intended to start his own clinic on the ground floor and reside on the first floor. It was specifically declared by him that he had no other residential or non-residential building in Rohtak.

On being put to notice the petitioner-tenant submitted before the

Rent Controller that the tenanted premises was a commercial building and therefore the same could have not been got vacated by the respondent on the ground of personal necessity through a petition filed under Section 13 of the Act. It was further pleaded that from the years 1976 to 1980 the respondent used to reside in a house in Rohtak which he vacated in the year 1980 without sufficient cause and since such vacation was after the commencement of the Act he was not entitled to maintain the present petition through which he sought the petitioner's eviction. The intention of the respondent to shift to Rohtak was also disputed.

The Rent Controller finding merit in the respondent's case through order dated 05.08.2013 directed the petitioner's eviction from the tenanted premises. The petitioner's appeal against such eviction was dismissed by the Appellate Authority, giving her a cause to knock the doors of this Court through the present petition.

Learned counsel for the petitioner while reiterating the afore-referred grounds raised by the petitioner before the Rent Controller further went on to contend that the respondent had, earlier to the filing of the instant eviction petition, filed two eviction petitions on similar grounds in which he did not get relief and therefore the present petition was barred on the ground of *res judicata*. It was further submitted that in one of the earlier proceedings a specific finding had been returned that the tenanted premises was commercial in nature and therefore it was stressed that the respondent could not seek the petitioner's eviction from the tenanted premises on the ground of personal necessity through a petition filed under Section 13 of the Act.

The above submissions of learned counsel for the petitioner do not merit a favourable consideration.

The argument raised by learned counsel for the petitioner that the respondent could not seek the petitioner's eviction on the ground of bonafide

necessity through a petition filed under Section 13 of the Act as the tenanted premises was a commercial building, the same, in view of the law laid down by the Apex Court in “*Ashok Kumar vs. Ved Parkash and others*” (2010)2 SCC 264, is liable to be considered only to be rejected. In *Ashok Kumar's* case (supra) the Apex Court were interpreting Section 13 of the Act and held as under: -

“16. As noted hereinafter, the learned counsel for the appellant submitted before us that since the Act only permits a landlord to evict a tenant on the ground of *bonafide* requirement from a residential building and nothing has been stated in that provision or right has been created on the landlord to evict a tenant from a non-residential building on the ground of *bonafide* requirement, it is not open to the landlord to apply for eviction of a tenant from a non-residential premises on the ground of *bonafide* requirement when such ground was not specifically conferred by the Legislature under Section 13 of the Act or to the landlord to apply for eviction of the tenant from the non-residential premises. Therefore, according to the learned counsel for the appellant, the decision in Mohinder Prasad Jain (supra), which was delivered under the Act, is not a good law and, therefore, the matter may be referred to a larger Bench for consideration of this question. In support of this submission, the learned counsel for the appellant had cited a number of decisions namely, ***Common Cause v. Union of India and Ors.*** JT 2003 (Suppl.2) SC 270, ***Padmasundara Rao and Ors. v. State of Tamil Nadu and Ors.***, 2002(2) RCR(Civil) 373 : (2002)3 SCC 533, ***Union of India v. Deoki Nandan Aggarwal***, AIR 1992 Supreme Court 96, ***Naveen Kohli v. Neethu Kohli***, 2006(2) RCR(Civil) 290 : 2006(4) SCC 558 and ***Vishnu Dutt Sharma v. Manju Sharma***, 2009(2) RCR(Civil) 506 : 2009(2) RAJ 542 : 2009(3) SCALE 425.

17. We have carefully considered the aforesaid decisions of this Court, as noted hereinafter. It is difficult to accept that the decisions cited by the learned counsel for the appellant in support of his aforesaid submission will lead us to hold that the landlord shall not be entitled to evict a tenant from a non-residential premises for *bonafide* requirement, when such ground for eviction has been made available only in case of residential premises.

18. In our view, the view taken in Mohinder Prasad Jain (Supra) cannot be said to be a bad law on the ground that it was really an usurpation of legislative duties on the part of the Court by any stretch of imagination.

19. xxx xxx xxx

20. xxx xxx xxx

21. Thus, in view of the overall discussions made hereinabove, we are unable to accept the submission of the learned counsel for the appellant that an eviction petition filed by a landlord for eviction of a tenant cannot be filed under Section 13 of the Act when such eviction proceeding relates to a non- residential building.”

(emphasis supplied)

A perusal of the afore extracted portion of the judgment in *Ashok Kumar's* case (supra) leaves no manner of doubt that a landlord, through a petition filed under Section 13 of the Act, can seek the eviction of a tenant for bonafide

need even if the tenanted premises was a non-residential building.

So far as the argument of learned counsel for the petitioner to set aside the impugned eviction orders passed by the Rent Controller and the Appellate Authority on the ground of *res judicata* is concerned, the same also deserves rejection. It is not disputed that on 31.05.2004 the respondent-landlord retired from the Government service and on 04.05.2004, he filed a petition under Section 13-A (1-A) of the Act seeking therein the petitioner's ejection. Section 13-A (1-A) provides for a special remedy to a retired Government employee to seek eviction of his tenant at the time of his retirement. While such petition was pending, on 07.06.2004 he filed another eviction petition in which he raised an additional ground but since two parallel petitions could not be maintained, on 21.03.2005 on his own statement the first petition was adjourned sine-die. Thus, no opinion of the Court was expressed in the first eviction petition. In the second petition the Rent Controller, after classifying the tenanted premises to be commercial in nature, held the eviction petition to be not maintainable under Section 13-A (1-A) of the Act as the benefit of such provision was held to be applicable only to residential buildings. The operative part of judgment dated 27.05.2006, passed by the Rent Controller is as under: -

“14. In view of my above discussions, I have no hesitation to hold that the premises in question are non-residential building and cannot be got vacated on the ground of personal bonafide necessity as provided under Section 13 (A) of the Haryana Urban (Control of Rent and Eviction) Act. If this petition would have been under Section 13(3)(A) of the Haryana Act, the position may have been different. However, petition under Section 13 (A) of the Haryana Act in respect of non-residential building is not maintainable. Faced with this situation, the learned counsel for the petitioner has contended that as the first floor portion of the building is being used for residential purpose and the same is a residential property, his petition can be considered in respect of first floor portion only and ejection of that residential portion may be passed. However, in case titled Shri K.B.Sharma and another vs. Vikram Loomba, District Attorney, Gurdaspur (Punjab), 2003, HRR-265, Hon'ble Punjab and Haryana High Court had clearly held that where the landlord seeks the eviction of tenants from the residential portion on the ground of bona-fide necessity and in fact the building contains two portions, commercial and residential, the splitting of tenancy is not legally permissible and the landlord is not entitled to seek eviction by splitting that tenancy. Thus, this contention of learned counsel for the petitioner is also devoid of any merits and is hereby rejected. Learned counsel for the respondent has next contended that the petitioner does not intend to shift to the premises in

dispute and in fact intends to sell the property in question. He pointed out that during his cross-examination, he admitted that he intended to sell the premises in dispute and the respondent had also offered him to purchase the premises. He contended that thus the bonafide necessity of petitioner has not been proved on the case file. However, I am not convinced with this contention of learned counsel for the respondent. As specified landlord in his petition for ejection of the tenant on the ground of personal bonafide necessity need not prove any other thing except that he has retired from service and wanted to shift at the demised premises. As the petitioner has proved that he was a central government employee and he was going to retire within six months from the date of filing of the present petition, he was not required to lead any other evidence to prove his personal bonafide necessity. As he is proved to be specified landlord and he intended to shift at Rohtak in his own property, his personal bonafide necessity stands proved. However, as the premises in question have been held to be non-residential, his petition under Section 13 A of the Haryana Act is not maintainable due to the fact that he cannot seek eviction of tenant on the ground of personal bonafide necessity in respect of non-residential premises."

(emphasis supplied)

From the above extract it is clear that the second petition filed by the respondent-landlord was held to be not maintainable.

It deserves notice that the respondent retired from Government service on 31.05.2004 and for the last over thirteen years through filing of three eviction petitions has been making tireless efforts to secure possession of the premises which he owns for his bonafide personal use. In the present proceedings both the Rent Controller as also the Appellate Authority have concurrently found the need of the respondent to be bonafide and nothing has been even urged before this Court to question the above concurrent findings.

In the light of the above factual position which are peculiar to the present case, it cannot be held that the present petition preferred by the respondent would be barred by the principles of *res judicata*.

The submission by learned counsel for the petitioner that the respondent had vacated a similar premises in the year 1980 without reasonable cause also does not merit acceptance simply on the ground that in this regard no evidence was led by the petitioner either before the Rent Controller or before the Appellate Authority. Rather, the record reveals that the petitioner did not lead any evidence whatsoever-oral or documentary.

In view of the above, the concurrent findings returned by both the Rent Controller as also the Appellate Authority need no interference.

Dismissed.

08.12.2017
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No