

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

**Civil Revision No.76 of 2017 (O&M)
Decided on : 09.02.2017**

Khushal Bawa

... Petitioner

Versus

Smt. Tarawanti (deceased) through her legal representative

... Respondent

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

Present : Mr. Naveen Kumar, Advocate for the petitioner.

G.S. Sandhawalia, J. (Oral)

The petitioner-tenant challenges the concurrent findings recorded by the Courts below, whereby the ejectment has been ordered on the ground of bonafide requirement, nuisance and material impairment of the premises in question, which is a shop situated near Lal Masjid, Civil Road, Rohtak by the Rent Controller, Rohtak on 31.07.2015.

The findings which have been recorded by the Courts below are that on account of acquisition of part of the premises for widening the road, portion of the building was demolished in which the shop is constructed. Therefore, the stair-case which was providing access to the first floor is no longer in existence and, thus, the landlord has lost his right to access the first floor and, therefore, requires the premises in question for the purpose of access to the first floor.

The reasoning which thus has been recorded by the authorities below that on account of such compulsory acquisition, the requirement as such is bonafide cannot be faulted with in the opinion of this Court.

Counsel for the petitioner though has argued that there is

sufficient place at the back of the shop and the petitioner is willing, whereby the landlord can be accommodated and a stair-case can be used to have access, as it was existing.

The said argument can only be noticed and rejected. The basic principle which has been laid down by the Apex Court is that it is not for the tenant to dictate to the landlord as to how the properties are to be utilized and the tenant cannot claim as a matter of right to continue in possession of the premises in question at the cost of the landlord. Keeping in mind this principle the facts need to be gone into afresh.

The shop was taken on rent on 31.08.2004 as per the pleadings of the respondent-landlady for a period of five years on the monthly rent of ₹1,452/-. Resultantly, the eviction petition was filed on 27.03.2010, whereby the plea taken was that the rent had not been paid after the expiry of the period on 31.12.2007 and, therefore, the landlady was not willing to retain the petitioner as a tenant and had asked the tenant to vacate the premises. It was further averred that the tenant was a source of nuisance as whenever the landlady had gone to him for collecting the rent then he had cursed her alongwith her family members and had also involved them in a false criminal case. It was further prayed that the eviction be granted on the ground of personal necessity as the State Government has dismantled the front portion of the shop in question including the stair-case which was going towards the upper storey of the rented premises which was still in possession of the

petitioner. The action had been taken to widen the road, but on account of this reason the landlady has lost her staircase and now she has no passage for ingress and egress to the property and and prayer was also made for eviction on the ground of personal necessity.

The allegations were made that the tenant had changed the structure of the tenanted premises without her consent and had constructed two new pillars, shutter and front wall and completely changed the nature and dimensions of the property in question. The floor of the tenanted premises had been broken and its level had been raised despite protest raised by the landlady.

The petition was contested by holding out that these were false assertions and the shop had been given on rent as per agreement dated 06.01.1993 and when the landlady had become owner of the tenanted premises she had further executed the rent agreement dated 31.08.2004 @ rent of ₹1,452/- per month. The tenancy had not been terminated. A huge amount had been received as compensation by the landlady and the respondent was suffering loss in the business due to the demolition of the front portion of the tenanted premises. The length of the shop had been decreased from 22 to 3 feet and the rent was also liable to be decreased. The rent had been tendered for the period commencing from 01.01.2008 till 31.08.2009 and an injunction suit had also been instituted. No member of the family had been involved in any criminal litigation and the petitioner had no right to make stair-case in a rented

premises and the tenant had not changed the nature of the shop in question. The following issues were framed by the Rent Controller:-

- “1. Whether the petitioner is entitled for eviction of the respondent from the shop in question on the grounds as averred in the petition? OPP*
- 2. Whether the petition of the petitioner is not maintainable in the present form? OPR*
- 3. Whether the petitioner has not come to the Court with clean hands? OPR*
- 4. Relief.”*

As many as four witnesses were examined by the respondent-landlady and, thereafter, the petitioner examined himself as RW-1.

The Rent Controller came to the conclusion that the landlady let out the first floor of the premises in question to one Rakesh Kumar, who was running cloth business and to Mahender who was running a Coaching Centre. On account of the demolition of the 2/3rd front portion of the shop which was dismantled and was utilized for widening the road, therefore, the landlady was cut-off from the first floor of the building. The petitioner-tenant was in occupation of very small portion i.e. 10 square yards out of the total area approximately 47 square yards, which he had taken on rent. He was however adamant in retaining its possession, even though the landlady could not utilize a substantial portion of the building, which is connected with the main road through the tenanted premises. Resultantly, the finding was recorded that pressure was being put on the landlady to alienate the entire building to

the tenant, so that he could retain the possession of tenanted premises.

It was to be noticed that the petitioner-tenant himself had admitted that prior to the demolition there was a passage going to the first floor and after the demolition of the stair-case no one was running business on the first floor. Therefore, the building has become useless regarding that area. Regarding the issue of material alteration, it was noticed that after the demolition reconstruction had been done as it was admitted by the tenant himself that he had installed two shutters and also included the area left for the stair-case and all these constructions had been done without the consent of the landlady and without taking permission from the Court. The report Ex.PW-3/A of the Tehsildar, namely, Ajit Singh, who had investigated the matter in view of the orders of Deputy Commissioner, Rohtak was taken into consideration to come to the conclusion that the structural changes were made in the premises by taking the law in his own hands. The landlady and her husband had been rebuked and, therefore, the structural changes were illegal and unauthorized. It was also noticed from the report as such that the tenant alongwith his brother and father had beaten the landlady and her daughter-in-law. Thus, eviction on the ground of nuisance was also directed.

In appeal the matter was also examined in length by the Appellate Authority. The Appellate Authority noticed that the PW-1, Yogesh Khurana who is the General Power of Attorney of the landlady was the son and since the landlady had expired before the decision of the

Rent Controller, in the appeal the legal representative of the landlady, namely, Yogesh Kumar Khurana had been arrayed as respondent, who was none other than the witness being the attorney before the Rent Controller.

The argument raised that the landlady had not been examined, thus was repelled on the ground that in view of the close relationship of the parties, the bonafide requirement could still be alleged by the legal representative who had stepped into the shoes of the landlady. The supplementary argument which has been raised and which is also raised before this Court regarding the amount of *Pagri* which has been taken on 17.10.1991 by the husband of the landlady to the tune of ₹10,50,000/- was rejected on the ground that the agreement has no bearing in the outcome of the final verdict of the case, in view of the relationship between the parties qua landlord and tenant. The fact also remains that the agreement was never exhibited as such or proved and neither was such defence ever raised in the written statement.

It is settled principle that the Courts cannot go beyond the pleadings and, therefore, the argument raised before the Appellate Authority was rightly repelled that the parties have to be adjusted on account of any such amount. In the absence of any such pleadings having been raised before the Rent Controller and once the issue for consideration was bonafide requirement and the ground of nuisance and material alteration, the amount of *Pagri* was alien as such to the dispute

in question.

The photocopy of the site plan has also been examined by this Court to notice that the building in question opens toward the main road and there was a *Gali* on the other side by which the stairs could not be constructed on any portion except the tenanted portion.

The Apex Court in '***Man Kaur (dead) by L.Rs. Vs. Hartar Singh Sangha'*** 2001 (1) PLR 744 has specifically held that where the attorney is a close relative and has deposed about the facts, it cannot be held against the party on account of the fact the landlady had personally not appeared. The findings which have been recorded are on the basis of material before the authorities below and it was admitted *inter se* the parties that demolition has taken place and there is no access to the first floor. In such case even in the absence of the landlady, it would not be a relevant factor as such, in view of the admitted position before the Courts below.

Resultantly, the concurrent findings which have been recorded by the authorities below and in view of the settled law of the Apex Court regarding the entitlement of the landlord and the fact that the date of the institution of the petition is the date for consideration even the expiry of the landlady as such during the eviction petition would not be of much help to the counsel for the petitioner. The requirement as such was not personal for her, it was for the purpose of having access to the first floor which has been denied and, therefore, the requirement would

be for the benefit of legal heirs also.

The Apex Court in Hindustan Petroleum Corporation Ltd.

Vs. Dilbahar Singh 2014 (9) SCC 78 has held that this Court is not sitting as a Court of appeal. The relevant observations read as under:-

“45. 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 re-appreciation 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 re-appreciate 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 argument raised that whether complete shop is required or not and whether portion of the shop can be used for the purpose of constructing the stair-case cannot be accepted, as it is not for the tenant as such to dictate to the landlady in what manner the property is to be utilized. Accordingly, the said argument is rejected, keeping in view the settled principles of law.

Resultantly, the present revision petition is dismissed in limine.

FEBRUARY 09, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>