

CR No.8412 of 2016 (O&M)

...Respondents

CR No.450 of 2017 (O&M)

...Respondents

Date of decision: 03.02.2017

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

Present: Mr.S.S.Gurna, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of CR-8412-2016 & CR-450-2017, since the order impugned, of the Appellate Authority, under the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), is the same. However, for dictating judgment, facts have been taken from CR-8412-2016 titled *Rajinderpal Singh Vs. Mela Ram (Deceased) th. LRs.*

Challenge in the present revision petitions is to the order dated 30.11.2013, whereby the Rent Controller, Patiala ordered eviction from both the shops in question, of two tenants who are the petitioners herein, on the ground of personal necessity of the grandson, namely, Litesh Kumar.

Counsel for the petitioner(s) has vehemently submitted that the pleadings, as such, would go on to show that there was lack of *bona fide* intention on the part of the respondent-landlord as specific plea, as such, has been taken that the grandson was unemployed. Reference is made to the cross-examination of the witness to show that the said grandson was an Income Tax

assessee and was showing income from M/s Assa Nand Mela Ram and that 12/15 workers were working, which the said grandson had admitted in the cross-examination, which was conducted in 2010-11. It is, accordingly, submitted that the *bona fide* aspect, as such, is missing and therefore, this Court, in revisional jurisdiction, should interfere, in the facts and circumstances.

A perusal of the record would go on to show that apart from the non-payment of rent, the plea for eviction was also on the ground that the respondent-landlord had three sons, two of them were doing business with him at Gur Mandi and the third one, namely, Rajinder Kumar was doing business in a separate shop. Litesh Kumar was son of Ramesh Kumar, for whom, the shops were required for opening a departmental store in the shape of karyana store. It is specifically pleaded that the shops in question were 10.6'x16.3' and since they were adjoining, by removing the intervening wall, the proposed departmental store would turn into 21'x16.3', which was a good size for running a departmental store.

The defence of the petitioner-tenant was that the purpose was only for enhancing the rent, since the rent initially was Rs.175/- per month and now, as per the stand of the landlord, it was Rs.535/- per month, as per the rent agreement dated 31.01.1984. It is also alleged that there were other properties in the name of the landlord which had been concealed and therefore, the mandatory requirements of the East Punjab Urban Rent Restriction Act, 1949 have not been fulfilled. The sons and grandsons of the respondent-landlord were well established and it was denied that Litesh

Kumar was unemployed. Specifically it was alleged that there were 12/15 workers working under him and the daily income was Rs.1-1 ½ lakhs which were growing. The respondent-landlord was maintaining a workshop situated at Saifabadi Gate, Patiala and 12/14 persons were employed in the shop having area of 42'x52' and therefore, the *bona fides*, as such, were sought to be questioned.

The following issues were framed by the Rent Controller:

1. Whether the respondent is in arrear of rent and liable to be ejected: OPA
2. Whether the rent tendered is short and invalid if so to what effect? OPA
3. Whether the petitioner requires the premises in dispute for his own use and occupation? OPA
4. Relief.

The respondent-landlord examined Ramesh Kumar as PW1, who is father of Litesh Kumar and he himself stepped into the witness box as PW2 and thereafter, examined his grandson-Litesh Kumar as PW3, for whom the requirement was there. The petitioner-tenant failed to examine any witness in his evidence and only exhibited certain documents. Eviction was also ordered on account of not tendering the rent, which was claimed from April, 2008. It is not disputed that the rent was, as such, paid before the Lower Appellate Court and therefore, the said issue does not, as such, require any attention.

The Rent Controller, in a detailed discussion, came to the conclusion that though the landlord might be running large scale business but that would not give the tenant a ground to dictate the terms as to whether he

could get the shops vacated or not. If the landlord wanted to settle the grandson by getting vacated the 2 tenanted shops, for setting up a departmental store, it was, as such, his right as he was the best judge of his requirement and there could be no lack of *bona fide* for the requirement of the landlord. Resultantly, eviction order was passed on 30.11.2013.

In appeal, the Appellate Authority upheld the order on the ground that the landlord was the master of his needs and neither the tenant nor the Court could advise him as to his need of the circumstances and how he has to fulfill his personal *bona fide* needs. Reliance was placed upon the judgments of this Court and the Apex Court regarding the said proposition and resultantly, the findings recorded by the Rent Controller were upheld.

In the opinion of this Court, the landlord has been very specific as to the requirement for his grandson. It has been categorically stated by him that he has three sons, two of them were doing business with him whereas the third one was doing business separately. Merely because the grandson was working, as such, along with the grandfather and was also an Income Tax assessee, would not, as such, take away his right to improve his status in life by running an independent business, apart from the one in which his family is involved, which was the cumulative cause of action for which the two ejectment applications were filed, for running a departmental store, which was proposed to be done by removing the intervening wall of the two shops.

The Supreme Court while while dilating on the issue of bonafide requirement of the landlord in Sarla Ahuja Vs. United India Insurance

Company Ltd. 1998(Sup2)) Supreme Court Reporter 390 held that the requirement of landlord for occupation of the tenanted premises must be bonafide and the Rent Controller shall not proceed on the assumption that requirement is not bonafide. The principle that tenant is not to dictate terms to the landlord as to how the property could be utilized and how the landlord had to adjust himself was kept in mind. Thereafter, in **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta 1999(3) Supreme Court Reporter 1260**, it was held that the bonafide and genuine need of the landlord is to be taken into account and that the Court would not put its own wisdom upon the choice of the landlord and a practical approach was to be kept in mind. The requirement should be sincere and honest and not a mere pretense. If the facts showed that the answer was in positive, the need was to be considered bonafide. Relevant observations read as under:-

12. Chambers 20th Century Dictionary defines *bonafide* to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define *bonafide* to mean 'good faith, without fraud or deceit'. Thus the term *bonafide* or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required *bonafide*' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family

would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its *bonafides* would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is *bonafide*. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of *bonafide* need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

Accordingly, it was held that the landlord could not be asked to shift to a different house and locality whereas the tenant would continue to live in the tenanted premises and if the landlord wished to live in comfort of his house, the law could not expect him to live in a smaller premises while protecting the tenant's occupancy.

Similarly, Hon'ble Apex Court in ***Joginder Pal Vs. Naval Kishore Behal 2002 (2) PLR 625*** while taking into consideration the provisions of section 13 of the East Punjab Urban Rent Restriction Act, 1949 has held as under:

“24. We are of the opinion that the expression 'for his own use' as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the *pari materia* provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user.

Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.

Thereafter, the conclusions were drawn up which reads as under:

Our conclusions are crystalised as under:

(i) the words 'for his own use' as occurring in Section 13 (3) (a) (ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression landlord requires for 'his own use', is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord

himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as inter-relationship and inter-dependence economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and

genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii).”

Similarly, in *Atma S. Berar Vs. Mukhtiar Singh AIR 2003*

SC 624 it was held that the landlord is the best judge of the premises and has complete freedom regarding how he is to use his premises and it is not for the tenant or for the Courts to hold whether the requirement is not appropriate and that he continues functioning in the premises in question.

The relevant observations read as under:

“15. The learned Counsel for the tenant-respondent submitted that the findings arrived at by the Rent Controller and the appellate authority were vitiated and the High Court was justified in interfering therewith especially in the light of the events which had taken place during the pendency of the proceedings. The power of the Court to take note of subsequent events is well-settled and undoubted. However, it is accompanied by three riders; firstly, the subsequent event should be brought promptly, to the notice of the Court; secondly, it should be brought to the notice of the Court consistently with rules of procedure enabling Court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events; and thirdly, the subsequent event must have a material bearing on right to relief of any party. We have dealt with each one of the so called subsequent events brought to the notice of the High Court

as also of this Court by the learned Counsel for the tenant-respondent. None of them causes a dint in the case of bona fides and need as were found proved by the authorities below the High Court. Seen in the light of normal human nature and behaviour, the events pendente lite rather reinforce the direness of the need. We need only remind ourselves of the observations made by three-Judges Bench of this Court in Prativa Devi's case (supra) - "the landlord is the best judge of his residential requirements. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own". The High Court need not be solicitous and venture in suggesting what would be more appropriate for the landlord to do. "That was the look out of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for..... There is no law which deprives the landlord of the beneficial enjoyment of his property". The present one, in our opinion, is an appropriate case where the High Court ought not to have interfered with the findings of fact arrived at by the two authorities below and that too concurrently, in exercise of its revisional jurisdiction simply because it was inclined to have a different opinion."

The right and privilege of the landlord to choose the nature of business and place and the fact that the tenant cannot dictate the terms and advise him what line of action he should follow or what he should do and what he should not do has time and again been frowned upon by the Apex Court. It has also been held that a pragmatic approach is to be taken and the crucial date of litigation when the suit for eviction was filed although subsequent events can be taken into consideration for

moulding the reliefs have to be kept in mind but the fact remains that the person who had started litigation cannot be expected to sit idle during the said period. The observations of the Apex Court in **Pratap Rai Tanwani Vs. Uttam Chand (2004) 8 SCC 490** and **Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and others (2005) 8 SCC 252** are to this effect.

Keeping in view the above observations, this Court is of the opinion that the orders of eviction, as such, do not suffer from any infirmity which would warrant interference in revisional jurisdiction of this Court. Resultantly, the present revision petitions are dismissed in limine.

February 3rd, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes