

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

665

CR No.1521 of 2007 (O & M)
Date of Decision:26.07.2018

Anil Kumar and another

...Petitioners

Versus

Makhan Singh Grewal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aayush Gupta, Advocate
for the petitioners.

Mr. M.L. Sarin, Senior Advocate with
Ms. Himani Sarin, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Tenant-petitioner is in the revision petition against the order passed by the learned Appellate Authority ordering his eviction on the ground of non-payment of rent, however, reversing the finding of the Rent Controller with regard to bona fide necessity of the landlord.

Question which needs consideration is:-

Question:- When a prayer is made by landlord seeking eviction of the tenant on several grounds and an order is passed on anyone of them, can he in a revision petition filed by the tenant, in one hand support the order of eviction and urge before the Revisional Court to uphold the eviction order and on the other hand dispute the correctness of findings adverse to him without filing separate petition?

The arguments were heard on 20.07.2018 when learned counsel for the petitioners pointed out that no provisional rent has been assessed and

since quantum was not assessed, therefore, the case was required to be

remanded back to the Rent Controller in view of the judgment passed by the Hon'ble Supreme Court in the case of **“Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation” 2003 (1) Apex Court Judgments (SC) 610**. He further submitted that before the learned Appellate Authority, he also filed an application under Order 41 Rule 27 of the Code of Civil Procedure to prove deposit of the rent in the Bank account maintained by the landlord. However, on the other hand, learned counsel for the landlord-respondent submitted that he is also challenging the findings of the learned Appellate Authority with regard to bona fide necessity of the landlord which has decided against his client being erroneous. He submitted that as per the provisions of Section 15(5) of the East Punjab Urban Rent Restriction Act ('Act' – for short), High Court is entitled to examine the grounds of eviction which has gone against the landlord without filing separate revision petition. He submitted that the order of eviction of a tenant can be defended on other grounds pleaded but not accepted by the authorities. He relied upon a judgment passed by the Hon'ble Supreme Court (2002) 6 SCC 1 **“Nalakath Sainuddin vs. Koorikadan Sulaiman”** in support of his submission. It may be noted that language of Section 15(5) of the Act, which enables the High Court to exercise jurisdiction of revision either on the application of any aggrieved party or on its own motion. Section 15 of the Act is extracted as under:-

“ Section 15:- Vesting of appellate authority on officers by State Government-

(1) (a) The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the

powers of appellate authorities for the purpose of this Act, in such area in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. [In computing the period of fifteen days the time taken to obtain a certified copy of the order appealed against shall be excluded.]

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

(4) The decision of the appellate authority and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any Court of Law [except

as provided in sub-section (5) of this section.]

(5) The High Court may, at any time on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit.]”

In view of the aforesaid submissions on 20.07.2018, this Court had passed following order:-

“Arguments partly heard.

Learned counsel for the respondent-landlord has pointed out that findings of the learned Appellate Authority on the question of personal necessity are erroneous. He has submitted that the landlord as a respondent can challenge the aforesaid finding in a revision petition filed by the tenant. He has referred the provisions of Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 and the judgment passed by Hon'ble Supreme Court reported as 2002(2) Rent Control Reporter 114 in support of his contention.

Learned counsel for the petitioner prays for short accommodation to examine this issue.

List on 26.07.2018 in urgent.”

Learned counsel for the petitioners was thus given opportunity

to assist the Court on this aspect of the matter.

Learned counsel for the landlord-respondent has been heard on the question of personal necessity as learned counsel for the petitioners-tenants could not draw attention of the Court to any view to the contrary. On careful examination of provisions of Section 15 (5) of the Act of 1949, it is apparent that the High Court has been given wide powers, including suo moto power, to call for and examine the records relating to any order passed or proceedings taken under the Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it deem appropriate. Hence, it is held that the respondent while defending the revision petition can draw the attention of the Court towards an erroneous finding, without filing separate appeal or cross objections, even if the ultimate decision was delivered in his favour. The powers under Section 15(5) of the East Punjab Urban Rent Restriction Act are wider than the powers under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965.

Learned counsel for the petitioners has pointed out that there is a variation in the pleadings and the evidence led. He submitted that while filing a petition, landlord-respondent had pleaded in the following manner:-

“3.(c) That the petitioner requires the tenanted premises for his own use and occupation. In fact the tenanted premises was an outlet for going to the Pakhowal Road as there is no other gate or opening towards the same. As the petitioner was living out of India the outlet was converted into the shop by putting on a shutter. As the petitioner and his family now wants

to settle in India the vacation of the shop is necessary as otherwise the petitioner has no passage or outlet of his property towards the Pakhowal Road except through the tenanted premises.”

He submitted that from the reading of the rent note and the statement of the landlord, it is clear that the landlord has not deposed what was pleaded in the petition. With the assistance of learned counsel, this Court has gone through the statement of the landlord, which has been translated by the learned counsel for the petitioner, correctness whereof is not being disputed. The relevant part of the statement of the landlord reads as under:-

“The disputed property has been converted in shop without my permission in my absence. The gate of my house, which opens towards Pakhowal Road, now the respondent has closed passage with converting it into shop. Gate has been installed and pillars are dismantled. Fixing glass shutter has been installed in my absence. Since earlier I had asked the respondent to do the work of shave sitting in the passage. Making holes in the walls he has fixed fixtures. Floor has been broken and plaster of walls has been dismantled. Now my children have become major. I have no house except of that house at Ludhiana and has not taken any rent so far for the said house. Now I want to come to India along with family and want settle at Ludhiana permanently. I have requested the respondent to vacate the passage but he

did not vacant the passage. The gate of my house opens towards Phokhwal Road. The passage of rooms which links to my house, has been closed by the respondent from its west side.”

On careful examination of the aforesaid evidence, this Court does not find any substance in the argument of learned counsel for the tenant-petitioner that the evidence of the landlord-respondent is different than what was pleaded in the petition.

In the present case, learned Appellate Authority had refused to order eviction on the ground that the landlord is wanting eviction of the tenant from the premises which is being used for commercial for being put to use as a residential purposes. However, learned counsel for the landlord has submitted that it is the specific case of the landlord that the property in dispute was a passage opening towards Pakhowal Road and since the landlord was living out of country, therefore, only space in passage was leased out which has been converted into a shop. In fact it was a passage leading to the residential building towards Pakhowal Road. He submitted that with regard to passage, the requirement cannot be said to be only for residential purpose. He further submitted that part of the building is being used for residential purpose whereas remaining part of the premises is being used for commercial purposes. Therefore, it is mix use building and, therefore, the purpose cannot be exclusively residential or commercial. He also brought to the notice of the Court that landlord had constructed 12 shops. Eviction whereof was sought under the Act and all 12 shops which have already been vacated and lying vacant because of the fact that the petitioner-tenant is holding on to the property resulting in frustrating the

entire purpose for which the remaining shops were got vacated.

This Court has considered the submissions and find merit in the submission of learned counsel for the landlord. It is a positive case of the landlord that he was having a passage towards Pakhowal Road but since he was living out of country, therefore, a small space in the passage was let out which has been converted into a shop by putting a shutter. It has further been pleaded that the landlord and his family now wants to settle in India. It is further pleaded that there is no passage towards Pakhowal Road. Learned Appellate Authority has not found that there is a passage towards Pakhowal Road.

Landlord is a best Judge of his requirement and the tenants cannot impose their opinion. Same is the position with respect to Courts. The bona fide requirement has to be seen from the prism of personal necessity of a landlord. Of course, the tenant is entitled to point out that the requirement of the landlord is not a bona fide requirement.

In view of the discussion made above, the order of eviction passed by the learned Appellate Authority is upheld on the ground of personal necessity. Question which was framed is answered in favour of the respondent-landlord.

Revision petition is dismissed.

All the miscellaneous applications, if any, are disposed of, in view of the above said judgment.

26.07.2018

sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No