

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.3333 of 2015 (O&M)
Date of Decision:09.10.2018

Jarnail Singh

...Petitioner

Versus

Vijay Kumar

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.K.S.Rekhi, Advocate for the petitioner.
Mr.Anil Chawla, Advocate for the respondent.

ANIL KSHETARPAL, J.

The landlord-petitioner is in the revision petition against the orders passed by the Rent Controller, affirmed by the Appellate Authority, dismissing his petition, seeking eviction of the respondent-tenant from the premises in dispute.

Question which needs determination is whether if a part of larger residential building is let out for non-residential purpose then eviction can be sought by the landlord for bonafide requirement i.e. non-residential purpose particularly when rented property was leased for non-residential purpose.

It is pertinent to mention here that the parties are governed by the provisions of East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act of 1949').

Admitted facts are that there are relationship between the landlord and the tenant. The respondent was inducted as per Rent Note dated 16.2.1989. The building was let out for non-residential purpose as

two shops and one small store room (kothri) was given on lease @ Rs.370/- per month. The landlord claimed that the grounds of eviction are non-payment of rent and his bonafide requirement. He pleads that after having retired as Superintendent from Gurunanak Dev University in January 2007, he wishes to start his business of Garments.

The petition was contested by the tenant while admitting that the rate of rent is Rs.370/- per month as per Rent Note dated 16.2.1989, however, denying that there was any increase of rent, as asserted by the landlord. Bonafide requirement of the landlord was also disputed and it was pleaded that the landlord has sufficient property for his own use.

Both the authorities held that the rate of rent is Rs.370/- per month and the landlord has failed to prove that there was any increase. With regard to bonafide requirement of the landlord, the courts have taken a view that since the building is a residential property, therefore, it cannot be got evicted by the landlord for commercial purpose.

At this stage, it will be appropriate to extract the definition of “building” as provided in Section 2(a) of the Act of 1949, “non-residential building” in Section 2(d) and “residential building” in Section 2(g) of the Act, which are as under:-

“2(a) “building means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house”

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2(d) “non-residential building” means a building being used

solely for the purpose of business or trade”

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2(g) “residential building” means any building which is not a non-residential building”

Section 11 of the Act of 1949 prohibits conversion of a residential building into non-residential building except with the permission in writing of the Controller.

Section 19 of the Act of 1949 provides that if any person contravenes any of the provision including that of Section 11 of the Act of 1949, he shall be punishable with fine, which may extend to one thousand rupees.

Now, in view of the aforesaid statutory provisions, this Court is to consider whether part of a larger building which was let out to the respondent is a residential building or a non-residential building. It is apparent from reading of Section 2(a) “building” means any building or part of a building let out for any purpose, whether being actually used for that purpose or not. The significant word for the purpose of decision of the present case is part of a building meaning thereby that part of the building also falls in the definition of building. If one carefully reads Section 2(d), “non-residential building” means a building being used solely for the purpose of business or trade.

In view of the aforesaid statutory provisions, let us examine the facts of the present case.

It is undisputed that two shops and one small shop (kothri) was let out as non-residential building for running a commercial purpose.

Therefore, the part of the building which was let out would fall within the meaning of words 'non-residential building'. No doubt, Section 11 of the Act of 1949 prohibits conversion of the building of residential building into a non-residential building. However, Section 19 of the Act of 1949 only provides that if any person contravenes any provision of Section 11 of the Act of 1949, he shall be punishable with fine.

In the present case, as far as part of the building which was let out and subject matter of eviction proceedings is no doubt a part of bigger residential building. However, it is in the shape of two shops and is small store, i.e. Kothri/Store room. In such circumstances, the premises in dispute in the present case cannot be said to be residential building. As far as the tenant is concerned, he cannot be permitted to assert that the building is residential building particularly when he had himself taken it on rent for commercial (non-residential) purposes. In the considered view of this Court, he cannot question the status of the building to be a residential so as to deny the petitioner for usage by the landlord for same purpose.

Still further, this aspect can be examined from another angle. In the present case, no evidence has been led to prove that two shops and a small store has any opening towards the residence. Thus, both the shops and the store room are a separate building not connected with the residential building.

The learned appellate authority has relied upon a judgment passed by Hon'ble the Supreme Court in the case of **Rai Chand Jain Vs. Miss Chandra Kanta Khosla, 1991 (1) RCR (Rent) 128** and a judgment of this Court in **United Commercial Bank and another Vs. Lalit Bahri**

and another, 2011 (1) RCR (Rent), 156. These judgments do not as a preposition of law lay down that the part of building which was given only for non-residential purpose cannot be got evicted on the ground of bonafide necessity of the landlord for non-residential purpose. A similar question arose before the court in the case of **Arun Kumar Vs. Shri Ashok Kumar Chhabra, 2011(1) RCR (Rent) 138**, where the Court took a view that once the tenant has been using the room as a shop, he cannot question the status of the building to be residential.

Hon'ble the Supreme Court in **Rai Chand Jain's case (supra)** found that the premises had been let out for residence, whereas it was being used for commercial purpose. It will be noted that in this case, Hon'ble the Supreme Court was dealing with the dispute pertaining to premises located in Chandigarh, where residential and commercial premises are entirely separate being part of the planned city and no commercial activity is permissible in the residential area. There is separate zoning, identified residential and non-residential premises. In the case of **Lalit Bahri (supra)**, the petition was filed for bonafide requirement of the landlord for residential purpose. Although premises was occupied by the Bank, ultimately the revision petition filed by the Bank was dismissed and the eviction order passed by the courts below was upheld.

Still further in the case of **Sh.Satpal Chadha Vs. Satish Kumar and another, 2011 (1) RCR (R) 456**, similar view was taken. Again in the case of **S.Narinder Singh and another Vs. Manohar Singh and others, 2011 (3) RCR (Civil) 396**, the court in detail after examining various aspects had held that the tenant is liable to be evicted even if the

building is part of a larger residential building. This Court can multiply the judgments but basic principle laid down is that if the premises is let out for non-residential purpose eviction can be sought for the aforesaid purpose.

Still further for the purpose of eviction of a building for bonafide requirement the words in the statute only makes a provision for residential purpose, however, later on the word 'residential' was struck down by Hon'ble the Supreme Court in the case of **Harbilas Rai Bansal Vs. The State of Punjab and another, 1996(1) SCC 1**. Thus the sentence has to be read without the word 'residential' hence 'building'.

It is well known that in the old cities, with the development and progress in the town, certain lanes become roads and on the front portion of the residential houses falling on the roads shops are opened. The big buildings are used for mixed purpose. There is no separate zoning between residential and commercial area. In such circumstances, once a building (part) is being used for a non-residential purpose, the landlord cannot be deprived of possession thereof for being used for the same purpose. It would be totally inequitable if the landlord is deprived of an opportunity to use the building which is being used for non-residential purpose by the tenant for the same purpose.

In the present case, it has come in the evidence that the landlord on account of delay started doing his business from a passage leading to his house. Thus, it is apparent that the landlord is interested in doing his business from the premises, i.e. shops. A landlord cannot be compelled to continue to work from the passage and the tenant should be allowed to enjoy possession of the premises.

The learned authorities have also held that the proper lay out plan of the building has not been filed. In the considered view of this Court, once the identity of the tenanted premises is not in dispute, Rent Note executed between the parties is also undisputed, even in absence of proper lay out plan, the petition cannot be dismissed.

In view of the aforesaid discussion, the orders under challenge are set aside. Revision petition is allowed. The tenant is granted two months' time to hand over the vacant possession of the premises to the landlord. Pending application(s), if any, shall also stand disposed of, in terms thereof.

09.10.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No