

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3736 of 2015 (O&M)

Date of Decision: 20.12.2018

S. Satbir Singh

.....Petitioner

VERSUS

Madan Lal Rambani (deceased) through LRs and othersRespondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Namit Gautam, Advocate
for the petitioner.

Mr. Sudeep Mahajan, Advocate
for the respondent no. 1-LRs.

SURINDER GUPTA, J.

Madan Lal Rambani (since deceased) now represented by his legal heirs filed petition under Section 13 of the East Punjab Urban Rent Restrict Act, 1949 (for short 'the Act') for ejectment of petitioner and proforma respondents no. 2 to 4 from first floor and *barsati* of the building bearing no *khana shamari* no. 1621 (now 1621/V) situated in Bazar Babe Atal Sahib, Amritsar. The demised premises was let out to Mohinder Gopal Singh w.e.f. 15.06.1982 at the monthly rent of ₹30/- for running hosiery work business. He died in 1998 leaving behind revision-petitioner and proforma respondents as his legal heirs.

2. The revision-petitioner alleged that the premises is in exclusive possession of Harbeer Singh, who at the time of filing of petition was residing there with his family. Mohinder Gopal Singh was also in possession of adjoining building no. 1622, where he was manufacturing hosiery material and then selling the same in the premises in question.

However, that portion was acquired by the Government under the scheme of beautification of Golden Temple. Thereafter, Mohinder Gopal Singh ceased to occupy the premises in question and stopped business of hosiery work and gave the same to respondent no. 1-Harbeer Singh for residential purpose.

3. The ejectment of tenants (revision-petitioner and proforma respondents) was sought on the ground of arrears of rent; change of user; and personal *bona fide* need of the landlord-respondent no. 1. Landlord-respondent no. 1 described his need for the demised premises in the petition as follows:-

“(iii) That the applicant requires the premises in question for his personal use and occupation. The applicant is residing in village Chabba and does not own or possess any other building except the building in question in any urban or rural area. The applicant is having one son namely Vikram Rambani who is of the age of 28 years and is likely to be married, but as the applicant is not having sufficient accommodation and as such the marriage of his son is being delayed. The applicant is also having four married daughters who offently used to visit the applicant along with their children but as the applicant is not having sufficient accommodation as such it is too difficult for him and his daughters to stay in the house where the applicant is residing at present. The wife of the applicant is also suffering from eye disease and also blood pressure and knee trouble and as

such the applicant wants to shift from village Chabba to Amritsar city, and even otherwise it is in the interest of justice, equity and fair play that the possession of the demised premises is handed over to the applicant so that he may be able to enjoy the retired life. The applicant is retired person and he was retired in the year 1987 as an Auditor from Punjab State Electricity Board.”

4. The issues as to whether tender of rent made by tenant; building has become unfit and unsafe for human habitation; and there is change of user of the demised premises, were decided against landlord-respondent no. 1 while *bona fide* need for the demised premises as projected by landlord-respondent no. 1 was held as proved, consequently, the tenant(s) was directed to vacate and hand over vacant possession of the demised premises to landlord-respondent no. 1. The order passed by learned Rent Controller was approved by the Appellate Authority. Not satisfied, one of the legal heir of Mohinder Gopal Singh, S. Satbir Singh through his attorney S. Charanjit Singh has filed this revision petition.

5. Learned counsel for the petitioner has assailed the personal *bona fide* need of the demised premises projected by landlord-respondent no. 1 on the ground that he sought ejectment of the tenant(s) from the demised premises with the plea that he required the same for his residential purpose. However, during pendency of ejectment petition an application was filed to amend the ground of personal *bona fide* necessity to state in the petition that the demised premises is required for non-residential purpose. The amendment sought was declined but learned Rent Controller as well as Appellate Authority have approved the need of the landlord to use the

building for non-residential purpose, which is against the plea raised by him.

6. Original tenant in the premises was Mohinder Gopal Singh, who admittedly died in the year 1998. The landlord has alleged in his petition that after death of Mohinder Gopal Singh, respondent no. 2-Harbeer Singh is using the demised premises for residential purpose. Though, all the legal heirs of Mohinder Gopal Singh were served but the ejectment petition was contested only by Harbeer Singh. In his reply, he denied that the demised premises is in his exclusive possession. He also refuted the plea of landlord-respondent no.1 that the demised premises is required for his personal *bona fide* necessity. He, however, did not appear to depose in support of the plea taken by him. Revision-petitioner, who had not filed written statement, stepped into witness box as RW-1 and denied the need for the demised premises as projected by landlord-respondent no. 1 for himself and his family members.

7. On appraisal of evidence, learned Rent Controller found the need for the demised premises as projected by landlord-respondent no. 1 as genuine and observed in paras 15 and 16 of his order as follows:-

“15. After hearing arguments and from the scrutiny of the case file, it reveals that the applicant while he was alive himself appeared in the witness box as AW-9 and his son Vikram Rambani also stepped into witness box as AW-10 and both of them categorically deposed that the demised premises is required for residential as well as business purpose to them as the wife of Madan Lal applicant and mother of AW-10 Vikram Rambani is not feeling well.

She is arrested by numerous diseases and for that purpose, it is very difficult to come from village Chabba where they are residing to Amritsar for treatment and other medical facilities and for the purpose, they want to demolish the old structure over the property in dispute and want to reconstruct for residential and commercial purposes, which is required to the son of the applicant AW-10 Vikram Rambani.

16. *I thank (sic think) it is not mere desire of the applicant, rather they want to settle themselves for residential or business purpose at Amritsar and moreover as per settled law, the tenant can not dictate the terms of starting business or residing to the landlord and it is established on the file by applicant that building in question is not only bona fide required for personal use and occupation to Madan Lal, rather also required to his son AW-10 Vikram Rambani.....”*

8. Perusal of the above conclusion as drawn by learned Rent Controller shows that the need of landlord-respondent no. 1 to use the demised premises for residential purpose was approved. If a person wants to demolish the tenanted premises so as to make it fit for residence and also for commercial purpose to earn his livelihood, it does not mean that the need of the landlord has changed for requirement of premises from residential to non-residential. There is no bar against the landlord to reside in the premises and also to use it for commercial purposes as the law and rules permit.

9. I have gone through statement of Madan Lal Rambani, who appeared as AW-9. In his affidavit (Ex. AW-8/1) he has detailed his need as pleaded in the petition. At that time he was 74 years of age and his wife was totally blind and heart patient. He had one son and four daughters, who were married and having children. He required the premises to have accommodation for his daughters and son and also to have medical facility at Amritsar as the same was not available in the village where he was living. There was no reason to doubt the intention of the landlord-respondent no. 1, who wanted to demolish the demised premises to reconstruct the same to make it fit for his residence. Son of the landlord, namely, Vikram Rambani also appeared as AW-10 and tendered his affidavit as (Ex. AW-9/1). He has stated that for medical treatment of his parents and requirement of accommodation for his business and residence in the demised premises he wants to shift to Amritsar after reconstructing the demised premises. He has further stated that he has planned to start business of cloth merchant in the demised premises for which his father had sufficient funds. As already discussed if a portion of the demised premises is used for the purpose of business of cloth merchant if the law and rules permit, it does not change/alter the need as projected by the landlord for the demised premises.

10. The finding of fact recorded by learned Rent Controller and Appellate Authority are based on appreciation of evidence on record. The scope of interference in revision petition is very limited as observed by Apex Court in case of **Hindustan Petroleum Corporation Ltd vs. Dilbahar Singh, 2014(9) SCC 78**, which reads as follows:-

“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 of 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.”

11. Learned counsel for the petitioner has not pointed out that the conclusion arrived at by learned Rent Controller and affirmed by the Appellate Authority suffer from any error of law; have been arrived at without considering the material evidence on record and are grossly erroneous as per law settled by Hon'ble Apex Court in above referred case. This Court in such circumstances is not required to reappreciate and reassess the evidence for coming to a different finding of fact than recorded by Courts below.

12. This revision petition has no merit and the same is dismissed.

13. On perusal of lower Court record, I find that ejectment petition was filed in June, 1999 and it has taken about two decades of litigation for the landlord and he has not been able to get possession of the demised premises despite ejectment order passed by learned Rent Controller in March, 2010. The tenant has been successful in delaying the delivery of possession of the demised premises to landlord-respondent no. 1 and now his legal heirs for a considerable long time.

14. Keeping in view all these facts and circumstances, it is expected from the Executing Court to proceed further in the matter expeditiously as and when execution petition is filed by legal heirs of landlord-respondent no. 1.

(SURINDER GUPTA)
JUDGE

December 20, 2018

jk

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No