

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 3663 of 2014

Date of Decision : 05.03.2018

Govind Ram

....Petitioner

Versus

Mukesh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Hemani Sarin, Advocate
for the petitioner.

Mr. Suman Jain, Advocate
for the respondents.

Surinder Gupta, J.

Chunni Lal (since deceased) filed petition under Section 13 of Haryana Urban (Control of Rent & Eviction) Act, 1973 seeking ejectment of Govind Ram, revision-petitioner from the demised premises i.e. Shop no. 106 situated in New Sabzi Mandi, Palwal on the ground that his married son Neeraj was unemployed after completing graduation and was dependent on him. Neeraj intended to start his own *kiryana* business in the shop in dispute and landlord-Chunni Lal wanted to settle him during his life time.

2. Learned Rent Controller, Palwal found need of landlord-Chunni Lal as not *bona fide*. Conclusions drawn by learned Rent Controller were based on following observations:-

- (i) In this case, it has come in evidence that the petitioner has four sons and Neeraj is dependent on him. It has also come in evidence that Neeraj is married and has three children. Though, Sh. Chunni Lal has stated that Neeraj is wholly dependent on him for his daily needs but it is highly improbable that a married boy would be

supported by his father who is aged person and the son would remain idle without any work for a long time. Though Neeraj is the son of the petitioner and it is the duty of the petitioner to settle his son, however, in no manner it can be said that Neeraj is wholly dependent on the petitioner for his livelihood.

- (ii) It is highly improbable that a young married boy would roam freely without any work and he would be supported by his father without asking him to work.
- (iii) Chunni Lal had sold shop no. 107, situated at new vegetable market, Palwal to Smt. Sushma Rani in the year 1999 but he had not disclosed any cause for selling similar shop situated in the vicinity. He had also sold some plots situated at Railway Road. In case he had any necessity he could retain the shop sold in the year 1999.
- (iv) It is also pertinent to mention here that besides Neeraj, petitioner has three others sons who are elder to Neeraj. Moreover, this Court has failed to understand that what step the petitioner had taken to settle his son Neeraj after he passed his graduation in the year 2005. The instant petition has been filed in the year 2009. Had the requirement of the petitioner been genuine, he would have filed the instant petition immediately after graduation by Neeraj.
- (v) Earlier, petitioner had filed civil suit for possession of the shop in dispute on the ground of personal *bona fide*

necessity, which was dismissed in the year 2008 and this petition was filed in the year 2009.

3. Taking note of above facts, learned Rent Controller held that the need of landlord-Chunni Lal is not *bona fide*.

4. Landlord-Chunni Lal died and his legal heirs preferred appeal before the Appellate Authority, Palwal, which was accepted with the observations as follows:-

“24. From the above discussed authorities, it is very much clear that it is the prerogative of the landlord to expand his business. If landlord asserts that he requires the tenanted premises to expand his business, his need must be presumed as *bonafide* and the Rent Controller shall not proceed to presume that the alleged need is not *bonafide*. A landlord is the best judge of his need and requirement. Even if the landlord has not pleaded the nature of the business to be started in the demised shop, he can consider feasibility of starting business when he occupies the shop. The landlord is not required to give a project report to the tenant (sic of business) he intends to start. Even if it is presumed that the son of the appellant is doing business with him, it does not mean that his requirement of the premises is *malafide*. The son of landlord cannot wait to start his new business till the premises is vacated and he has to do something during the disposal of the petition as observed by the Hon'ble Apex Court in ***M/s Sait Nagjee Purushotham's¹ case (supra)***. Every landlord-human being has every right to expand his business or open new ventures. Neither court nor tenant can curtail the legitimate right of the landlord to expand the business or to start new business. In the present age of technology, a person need not to be physically present in the business premises and it can be

remote controlled by keeping the expert employees to run the business. It is prerogative of the landlord to decide which premises is best suited for the business of his son and the tenant is no body to advise the landlord what to do and what not. The landlords having good financial status are even running business in so many countries and cities. Thus, seeking ejectment of the shop on the ground that his son is to be settled in the business of Kiryana in the demised premises cannot be said to be ulterior or malafide. If it is presumed to be true that the son of the appellant is gainfully employed, even then the tenant is not competent to stop him from extending his business. The son of the appellant is married having three school going children, therefore, he has a great responsibility to earn more to provide better life style to his family. Moreover, in the case in hand, it has been proved that the son of appellant is unemployed. He has also got registered his name in the list of unemployed persons with the employment exchange. Moreover, during the pendency of the appeal, the appellant has died and now it is for his son to make his own arrangement to run his livelihood. Thus, from every angle, the need of the appellant for demised premises is sincere, genuine and bonafide.”

5. Not satisfied, revision petitioner has filed present petition.
6. Learned counsel for the petitioner has argued that landlord-Chunni Lal has died. Admittedly, he was running a shop where his other three sons were working with him. Neeraj, for whose need the present shop has been sought to be vacated has also become co-owner of that shop and can easily join business with his other brothers. Subsequent event after death of landlord-Chunni Lal shows that need of landlord no more subsists.

Appellate Authority has not looked into this aspect or has not applied

statutory provisions to the evidence on record in proper perspective, as such, findings of Appellate Authority differing with the view taken by learned Rent Controller are not sustainable in the eyes of law. Appellate Authority while reversing the finding of fact must assign its specific reasons for differing with findings of lower Court. In this case, Appellate Authority without discussing reasons as recorded by learned Rent Controller has overruled the same, rendering its finding as not sustainable in the eyes of law. In support of his contention, learned counsel for the petitioner has relied on observations in cases of **Deena Nath vs. Pooran Lal, 2001 (2) RCR 130 (SC), Santosh Hazari vs. Purushottam Tiwari (Dead) by LRs, JT 2001 (2) SC 407, Madhukar and others vs. Sangram and others, 2001 (4) SCC 756 and S. Sankaran vs. D. Kausalya, JT 2007 (4) SC 251.** Learned counsel for revision-petitioner has further argued that after death of landlord-Chunni Lal his legal representatives in order to continue with present ejectment petition were required to amend the ejectment application to show as to how the alleged need still subsists and in support of his contention, she has relied on observations in cases of **Prabha Arora and another vs. Brij Mohini Anand and others, 2007 (2) RCR 600 (SC), Gurdev Singh vs. Surjit Kumar @ Jit and another, 1996 (4) Supreme Today 316, Jai Prakash Gupta (D) thr. LRs vs. Riyaz Ahamad and another, 2009 (2) RCR 474 and Maqboolunnisa vs. Mohd. Saleha Quaraishi, JT 1998 (9) SC 40.** She has also argued that it is proved on file that landlord-Chunni Lal was owner of another shop, which has been sold in the year 1999 but he has not disclosed this fact in pleadings or arguments, as such, he has failed to comply with provisions of Section 13 (3) (a) (i) of the East Punjab Urban Rent Restriction, 1949 and on this sole ground the

ejection petition is required to be dismissed. She has supported his contentions with observations of Full Bench of this Court in cases of **Banke Ram vs. Sarasvati Devi, 1977 (1) RCR (P&H) 595** and **Romesh Kumar vs. Atma Devi and others, 1985 (2) RJC 566**. She has argued that need of landlord-Chunni Lal as projected in this case was not *bona fide*. Neeraj was married son of landlord-Chunni Lal having three children and spending ₹10,000/- to ₹20,000/- per month on his family. It could not be believed that he was idle. This is particularly so when landlord-Chunni Lal was having a roaring business in another shop, where he had adjusted his other three sons. This shows that even Neeraj was working with landlord-Chunni Lal. Otherwise, he could not have been given such a huge amount for maintenance of his family. This shows that need of landlord-Chunni Lal was neither real nor *bona fide* and he had filed this petition only after losing the earlier civil suit. In support of his contention, she has placed reliance on observations in cases of **Deena Nath (supra)** and **Kempaiah vs. Lingaiah and others, 2001 (8) SCC 718**.

7. Learned counsel for the respondent has argued that crucial date for deciding the *bona fide* requirement of the landlord is date of his application for eviction and the law has been well settled on this issue in case of **Gaya Prasad vs. Pradeep Srivastava, 2001 AIR (SC) 803** and **Shakuntala Bai and others vs Narayan Dass and others, 2004 AIR (SC) 3484**. Learned Rent Controller has termed the need of landlord as flimsy only on conjectures, surmises and probabilities. It was proved that Neeraj, an educated son of landlord-Chunni Lal, wanted to settle in business. In Indian society every father has pious wish to settle his son during his life time and landlord-Chunni Lal was not an exception to it if he had desire to

set up a separate business for his son in the demised premises. So far as earlier suit filed by him is concerned, the same was dismissed on technical grounds that provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973 are applicable to this petition, as such, civil suit could not be maintainable.

8. I have carefully gone through the reasoning given by learned Rent Controller while dismissing the ejectment petition but find that learned Rent Controller has gone astray and findings recorded by it are illegal and perverse. Conclusion of learned Rent Controller that if father is maintaining his son after marriage, it should be deemed as highly improbable, cannot be accepted. Admittedly, father was having a business, where he had adjusted three other sons and even if it be believed that Neeraj was also helping his father in that business, still father may deem it appropriate to settle him separately in his independent business. It was for him to decide as to which son had to settle in the business being carried by him in his shop and which son had to do his separate business. It is quite possible that landlord-Chunni Lal may not have found it prudent or economically viable that Neeraj should be taken in the business being run by him. The findings recorded by learned Rent Controller terming wish of landlord-Chunni Lal and facts stated by him for his *bona fide* need as highly improbable, are not based on proper appreciation of facts and are perverse.

9. Learned counsel for the respondent has drawn my attention to observations in case of ***Deena Nath (supra)*** cited by learned counsel for petitioner, wherein it has been observed as follows:-

“15.The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory

mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available.”

10. When observations referred above are applied to facts and circumstances of present case, it is amply clear that need of landlord-Chunni Lal projected in this petition is genuine and *bona fide* and Appellate Authority has rightly appreciated the evidence and facts on file while accepting the appeal.

11. Much emphasis has been put on the fact that the Appellate Authority has failed to look into subsequent events after death of landlord-Chunni Lal and that Neeraj for whose need the demised premises was

sought to be vacated has now become co-owner in the shop in which

landlord-Chunni Lal was carrying on business.

12. Firstly, as per law laid down by Hon'ble Apex Court in cases of ***Gaya Prasad (supra)*** and ***Shakuntala Bai (supra)***, crucial date for deciding the *bona fide* need of landlord is the date of his application. Even otherwise, death of landlord-Chunni Lal has not created any circumstance under which a conclusion can be drawn that the need for demised premises projected in this petition has ceased to be *bona fide* need of landlord. In the shop of landlord-Chunni Lal, his three sons are already doing business. It was vision of landlord to settle his son in separate business. Tenant is nobody to challenge decision taken by landlord, who is best judge to decide as to how he has to settle his children and make arrangement to make them capable of earning their livelihood. Tenant has no business to suggest that after death of landlord his fourth son should also be adjusted in the joint business being run by three other sons of landlord. In case of ***Vinod Kumar vs Aruna Jain and another, 2017 (2) RCR (Civil) 448***, it was observed by this Court that it is for the landlord to select, choose and decide as to what type of business he has to carry on and tenant has no role to suggest as to where landlord should do that business or not. Applying the ratio of judgment in that case, it can be safely observed in this case as well that landlord was free to decide about employment for his son Neeraj by setting up his *kiryana* business in a separate shop.

13. Keeping in view above facts, I do not find that Appellate Authority has not applied statutory provisions in proper perspective or has not looked into judgment of learned Rent Controller while allowing the appeal. Observations in cases of ***Deena Nath (supra)***, ***Santosh Hazari (supra)***, ***Madhukar (supra)*** and ***S. Sankaran (supra)*** as referred by learned

counsel for revision-petitioner are not helpful to revision petitioner in facts and circumstances of present case.

14. This argument of learned counsel for the petitioner that respondents were required to amend the ejectment application to show as to how the need as projected by landlord-Chunni Lal still subsists, is also without basis and liable to be rejected in view of observations of Hon'ble Apex Court in case of ***Gaya Prasad (supra)*** and ***Shakuntala Bai (supra)***. Observations of Hon'ble Apex Court in case of ***Prabha Arora (supra)*** are not applicable to facts and circumstances of present case as in that case during pendency of appeal a trust was created in respect of the property in dispute. In case of ***Gurdev Singh (supra)*** after death of landlord, his wife had projected her need for the demised premises stating before Hon'ble Apex Court that she has returned to India and needs house in question for her personal residence. The case was remanded back to Appellate Authority to enable legal representatives to establish their claim. In case of ***Jai Parkash (supra)***, landlord had sought eviction of the tenant from the shop to set up office for his son, who was chartered account. It was observed that the landlord had acquired house behind the shop in dispute and was required to prove that said house was not suitable for starting of office for chartered accountancy firm. The premises in which landlord was running business had also fallen vacant after his death. With these observations the matter was referred for further examination. In case of ***Maqboolunnisa (supra)***, the shop of same size adjoining the demised premises was vacated by one of the tenant and keeping in view that subsequent event, need of the landlord was not found *bona fide*.

15. Observation in all the above citations are based on peculiar

facts and circumstances of those cases, which are not relevant or material in instant case or help in any manner to advance the case of petitioner. No other accommodation after death of landlord-Chunni Lal has fallen vacant. The shop in which he was carrying on his business is already with his other three sons, as such, need of landlord-Chunni Lal remains genuine and *bona fide*.

16. It has been argued by learned counsel for the revision-petitioner that there is concealment of fact regarding sale of shop by landlord-Chunni Lal in the year 1999. Learned Appellate Authority has looked into this aspect and observed in para 29 as follows:-

“29. Coming to the facts of the case in hand, both the parties knew each other's case and have led evidence accordingly. The appellant has made it clear that shop no. 107 in New Vegetable Market, Palwal was in the names of Chunni Lal (appellant), Pawan Kumar son of Kalu Ram and Shyam Sunder son of Bhim Sain, which was jointly purchased by them vide receipt no. 303 dated 2.12.1992 and the said shop has been sold to Sushma Rani vide sale deed dated 12.2.1999 Ex. R-6. Thus, the appellant was not exclusive owner of the shop and the shop was not available to him for the business of his son being the joint property with the aforesaid persons. The sale deeds Ex. R-8 and Ex. R-10 pertain to the sale of plots which were sold in the year 1991 to 1993 when Neeraj son of appellant was ten years of age. Moreover, the plots do not fall within the definition of building. Thus, the same were not required to be pleaded in the petition and non mentioning thereof does not make any difference.”

17. I find no reason to disagree with observations of learned Appellate Authority. Even otherwise the sale of shop in the year 1999 and

plots in the year 1991 to 1993 have no bearing on personal *bona fide* necessity as projected in this petition by landlord-Chunni Lal. Taking note of all the above discussed facts and circumstances, I find no legal or factual infirmity in the judgment of learned Appellate Authority.

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

March 05, 2018
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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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