

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

**Date of decision: 13.8.2018**

1.

**CR No.3950 of 2018(O&M)**

Pardeep Kumar and others

.....Petitioners

VERSUS

Naresh Kumar Garg and others

.....Respondents

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2.

**CR No.4472 of 2018(O&M)**

Balwant Rai (since deceased) through his LRs Darshana Rani and others

.....Petitioners

VERSUS

Naresh Kumar Garg and others

.....Respondents

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Divanshu Jain, Advocate for the petitioners.

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**REKHA MITTAL, J.**

This order will dispose of CR Nos.3950 and 4472 of 2018 as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from CR No.3950 of 2018.

Naresh Kumar Garg, claiming himself to be landlord of the shop in question on the basis of family settlement reduced in writing vide memo of partition dated 19.12.2006, filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for eviction of the petitioners on various grounds including bona fide personal necessity of the respondents i.e. legal necessity of Nipun Garg son of

respondent-landlord. The Rent Controller, Zira allowed the application for eviction vide order dated 16.01.2017 and appeal preferred by the petitioners under Section 15 of the Act did not find favour with the Appellate Authority and eviction order was affirmed vide judgment dated 19.02.2018.

The respondent-landlord sought eviction on the ground of bona fide personal necessity by raising averments to the following effect:-

"The shop in dispute is required to the applicant for his bona fide personal legal necessity i.e. bona fide legal necessity of son of the applicant namely Nipun Garg. The applicant and his son are not occupying any other non-residential building in the urban area, where the shop in dispute is situated. The applicant and his son have not vacated such a building without sufficient cause after commencement of the East Punjab Urban Rent Restriction Act and in the area where the shop in dispute is situated.

The applicant has only one son namely Nipun Garg and son of the applicant is unemployed and at present, is not doing any work. The applicant was permanent resident of Zira from the time of his forefathers. However, during the terrorist activities in Punjab, the applicant shifted to Noida and since then is residing there. Now the applicant and his son have decided to return to their native town and son of the applicant has decided to start separate and independent business of readymade garments etc. in the shop in dispute and in the other three shops adjoining the shop in dispute owned by the applicant. There are four small shops adjoining each other

owned by the applicant and total area of all the four shops is about five marlas. The son of the applicant will demolish the old construction and in order to compete with others, he will construct a new showroom covering the entire area of all the four shops with latest amenities including try room, washroom etc. and will start the business. The area under all the four shops is hardly sufficient for a proper showroom of readymade garments with the latest amenities. The applicant is filing separate ejectment applications for getting all the four shops vacated from the tenants. The two shops owned by the applicant towards northern side are in possession of Suresh Lal, proforma respondent and Suresh Lal will vacate those shops and in those shops, the applicant will start his separate business."

Counsel for the petitioners has assailed the concurrent findings of fact qua bona fide personal necessity of the premises in dispute for business of son of the respondent-landlord primarily on three counts. The first submission made by counsel is that the respondent-landlord shifted from Zira in the year 1991 and since then he is permanently settled at Noida. Naresh Kumar Garg – respondent has admitted in his cross examination that he is doing the business as a proprietor under the name and style of Noida Steel Industry. Another firm known as Nav Fabtech Private Limited, Noida is in existence since the year 2012 and he is the Director of the said firm in which Satyaparkash Aggarwal etc. are the partners. His wife is owner of a house which is rented out to Apollo Hospital at the rate of Rs.40 lakhs per annum. Nipun Garg, alleged son of

the respondent, was born in the year 1994, therefore, he has spent his entire life till date at Noida and it is difficult to believe that the family would like to shift from Noida to Zira, a small town of Punjab, sufficient to create doubt if the property in dispute is required for bona fide use and occupation by the respondent for the business of his son. In support of his contention, he has relied upon judgments of this Court **Vidya Rattan Taneja and another Vs. Ram Lal Sachdeva and another, 2009 (1) RCR (Civil) 639; Bal Kishan Vs. Sat Parkash Sood, 1994 (1) RCR (Rent) 246; Kasturi Lal Handa and another Vs. Bhajan Singh, 1991 (2) RCR (Civil) 35** and **Kanwar Singh Vs. Maman Chand, 1980 (1) RCR (Rent) 678.**

Another submission made by counsel is that as per plea of the respondent-landlord, Nipun Garg is unemployed and not doing any work. The petition for eviction was filed in September 2013. The respondent-landlord tendered into evidence his affidavit dated 27.10.2014 by way of examination in chief wherein he reiterated his plea that Nipun is unemployed at present and is not doing any work. It is vehemently argued that this plea of the respondent-landlord gets falsified and belied from documents Ex.RW1/B (Annexure P-6) and RW1/C produced by a witness from the Income Tax Department examined by the petitioners. Counsel would point out that in the first return filed on 24.07.2013, Nipun has shown income of Rs.2,18,548/- from profits and gain from business and profession whereas in the second return for the assessment year 2014-15 filed on 25.07.2014, his income from profit and gains from business other than speculative business, profit and gains from speculative business is to the extent of Rs.3,49,038/-. According to counsel, as plea of the respondent-landlord with regard to Nipun being unemployed gets falsified

and belied by way of documentary evidence, it demolishes his plea of bona fide need projected by him.

Counsel has further argued that Nipun Garg did not appear in the witness box to corroborate plea of the respondent with regard to his intention to shift to Zira and start a business there and as such the petitioners have been deprived of opportunity to cross examine Nipun Garg and extract as to where lies the need. It is argued that an adverse inference is liable to be drawn for failure of Nipun Garg to appear in the witness box. For this purpose, reference has been made to judgments of this Court **Rajiv Gupta Vs. Jiwan Ram, 2015(1) RCR (Civil) 762; Brij Bhushan and another Vs Sanjay Harjai and another, 2015(2) RCR (Civil) 68.** In addition, it is argued that judgment of this Court relied upon by the Appellate Authority **Mahesh Chand Vs. Firm Hindu Khandan Mustarka Kripa Ram and Sons, 2006(1) RCR (Rent) 420** was rendered by this Court before the judgment was passed by Hon'ble the Supreme Court **Ajit Singh and another Vs. Jit Ram and another, 2008(2) RCR (Rent) 328.**

Counsel has made an attempt to argue that though the respondent has sought eviction for personal need of Nipun Garg but the Courts have decided the matter as if they were dealing with the personal requirement of the respondent-landlord.

To be fair to the petitioners, counsel has also referred to judgment of Hon'ble the Supreme Court **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, 1999 (2) RCR (Rent) 141** wherein the Court has laid down general principles as to meaning of bona fide requirement. In **Shiv Sarup Gupta's case** (supra), Hon'ble the Supreme Court has culled out certain principles to be kept in view while deciding the question of

bona fide requirement of the landlord. It has been held that requirement is not a mere desire, degree of intensity contemplated by requirement is much higher than in mere desire. The Judge of facts should place himself in the arm chair of landlord and then ask question to himself whether in the given facts the need of occupying the premises can be said to be natural, real and honest.

I have heard counsel for the petitioners, perused the paper-book particularly the judgments impugned and copies of documents supplied during the course of hearing.

Indisputably, the respondent-landlord shifted to Noida from Zira on account of terrorist activities in the State of Punjab particularly the area of District Ferozepur. Pardeep Kumar – petitioner appeared in the witness box and admitted that the respondent and certain other residents of the area shifted from Zira on account of terrorist activities. The respondent is a businessman of Zira and the family is residing there since the time of his forefathers. The respondent has admitted that he is carrying on two businesses in Noida, one as a proprietor and other in partnership. It is not the plea of the respondent that he wishes to wind up his affairs at Noida and thereafter shift to Zira and start business. If the respondent has decided to shift to his roots and start business there for his son as well as himself, it is difficult to accept contention of the petitioners that need projected by the respondent is not bona fide or genuine. As per the settled position in law, a landlord is the best judge of his need and the tenant or the Court cannot question him as to why he has decided to shift from Noida to Zira.

The judgments relied upon by counsel for the petitioners have been decided in view of peculiar facts and circumstances of the cases. In

**Vidya Rattan Taneja and another's case** (supra), landlords (three in number) settled at Delhi, Gurgaon and Chandigarh. Eviction was sought from a residential premises situated at Batra Colony, Sonapat. This Court by taking notice of various facts on record i.e. the petitioners-landlord obtained schooling at Lahore; Sh. Vidya Rattan had remained Head of Department in some University and the fact that they had retired much earlier than making application for ejectment; they were having houses in A class and metropolitan cities and their advance stages; they have neither ever lived at Sonapat and no other male or female member of their families is living at Sonapat who in this advanced age can attend to them in case any of them is unwell and the size of the house is only 150 sq. yards and there is no probability of accommodating the three landlords at the house which was not having any basic amenities of sewerage, flush latrine, water connection etc. and the comparison that presently they are living in big cities, the Court did not feel convinced that application for ejectment of the tenant on the ground of bona fide requirement is genuine and the same is held to be motivated with some other consideration and most likely to sell the house because the vacant house can fetch very handsome price whereas the house occupied by a tenant can fetch comparatively much less price.

Counsel for the petitioners has failed to advance any argument much less convincing as to how the judgment in **Vidya Rattan Taneja and others case** (supra) rendered in the light of peculiar facts and circumstances can be applied to the facts of the case in hand. Similarly, in the other judgments, this Court did not accept plea of the landlord qua bona fide personal necessity who intended to shift from Delhi to Patiala on the ground of medical facilities, security and social life in **Kasturi Lal Handa and another's case** (supra), from Calcutta to Bhiwani to start

business in the case of **Kanwar Singh's case** (supra). In this view of the matter, I find myself unable to accept contention of the petitioners that merely because the respondent and his family is residing at Noida since 1991 and the respondent-landlord has two businesses at that place, would stand in his way to shift to his native place where he remained residing for a period of about 35 years since his birth and his cousins and other members of parental family are still residents of Zira.

In the case at hand, the respondent-landlord shifted from Zira under compelling circumstances because of terrorist activities and has now decided to resettle at his native place. Naresh Kumar Garg was subject to cross-examine at length but counsel for the petitioners has failed to point out any facts elicited in his cross examination to create a slightest chink in his testimony with regard to his intention to shift to Zira and to settle his son Nipun Garg in a separate business of readymade garments etc., to be started by constructing a showroom after demolishing four adjoining shops under occupation of tenants.

This brings the Court to plea of the respondent that Nipun Garg is unemployed and not doing any work. As has been noticed hereinbefore, Naresh Kumar Garg appeared in the witness box and reiterated his plea in this regard. He has denied if Nipun Garg is partner in the two businesses being carried out by him. In cross examination of Naresh Kumar Garg, the petitioners, while reiterating their plea raised in the reply, have sought to put questions that Nipun Garg is not son of Naresh Kumar Garg. Nothing tangible and material has been elicited in cross examination of respondent that Nipun Garg is gainfully employed or he is doing any business. Except the two income tax returns referred to by counsel for the petitioners, no evidence has been led by the petitioners to

prove that Nipun Garg is doing a particular business or commercial activity.

So far as the income tax returns, the same reflects income from business to the extent of Rs.2,18,548/- for the assessment year 2013-14 and Rs.3,49,038/- for the assessment year 2014-15. In absence of any evidence on record that Nipun Garg is actually doing any business, it can safely be inferred that these returns were filed by Nipun Garg with an intent to generate capital for business to be started in future. After the income tax returns were produced by Ekta Mittal RW-1, an official from the Income Tax Department, the petitioners never sought to recall the respondent-landlord in order to confront him with income tax returns filed by Nipun Garg. Ekta Mittal in the concluding line of her cross examination has clearly deposed that she cannot tell which type of business is carried on by Nipun Garg.

The petitioners have also got produced income tax returns of Naresh Kumar Garg and his wife Nisha containing detailed reference of the source of income, computation etc and balance-sheets of the business of Sh. Naresh Kumar Garg and the rental income received by his wife. On the contrary, the income tax returns filed by Nipun Garg did not make reference to any particular business being carried on by him. All these facts lead to a conclusion that two income tax returns of Nipun Garg, are not sufficient to record a finding that Nipun Garg is doing a business or statement of respondent-landlord that Nipun Garg is unemployed or not doing any work is incorrect.

Nipun Garg did not appear in the witness box to corroborate plea of his father that he needs the demised premises for starting business of readymade garments. This Court in **Mahesh Chand's case** (supra) has

held that the landlord has appeared as witness and deposed in respect of the requirement. Such evidence has been believed by the Courts below, therefore, the Court did not find any patent illegality or material irregularity in the findings recorded by the Authorities under the Act which may warrant interference in exercise of revisional jurisdiction.

Counsel for the petitioners has sought to contend that this judgment cannot be applied after the decision by Hon'ble the Supreme Court in **Ajit Singh and another's case** (supra). I have gone through the judgment in **Ajit Singh and another's case** (supra) but unable to find if the Hon'ble Apex Court has laid down any such ratio that the son who is to use the premises in question after vacation must appear in the witness box to corroborate plea of the landlord. What has been held is that if the landlord has sought eviction from non-residential premises for use of his son for business, it is mandatory for son to plead and prove that he is not occupying any other such building and has not vacated such building without sufficient cause.

In the instant case, a specific plea has been raised by the respondent-landlord that neither he nor his son is occupying any other such building nor has vacated such building without sufficient cause after commencement of the Act, in the urban area concerned. The petitioners have failed to counter these averments much less to produce any materials on record that son of the respondent – landlord is in occupation of any other building or has vacated such building without sufficient cause after commencement of the Act. In this view of the matter, contention raised by counsel for the petitioners that judgment in **Mahesh Chand's case** (supra) does not hold the field is misconceived and liable to be rejected.

In **Manmohan Lal Vs. Shanti Parkash Jain, 2014 (2) RCR**

**(Rent) 222** relied upon by the petitioners, this Court has held that there is no need for examination of the son for whose necessity the eviction has been sought if statement of landlord is all pervasive, complete and believable.

In **Rajiv Gupta's case** (supra), the landlord failed to plead that neither he nor his sons are occupying any other building nor had they vacated any such building without sufficient cause. This Court has held that findings of the Rent Controller rendered after evaluation and appraisal of evidence and attending facts and circumstances holding non-existence of personal necessity for eviction of the premises has been sweepingly bypassed by the Appellate Authority. In addition, serious flaws in the case of the landlord in non-examination of son Puneet Garg for whose necessity he claims eviction of the premises, deposition of landlord and of his son Amit Garg has been highly sweeping and very general, have been ignored by the Appellate Authority. Further held that from examination of landlord, it has rather been established that they are engaged in the business of commission agency in the premises in their possession and thus do not require the tenanted premises. As the Court has allowed the revision petition of the tenant by taking into consideration various facts and circumstances, it is difficult to accept that merely because son of the landlord has not been examined, that itself becomes a ground for setting aside consistent findings recorded by the Courts, in exercise of limited revisional jurisdiction. I would hasten to add that the very same Single Bench that decided **Rajiv Gupta's case** (supra) has held in **Manmohan Lal's case** (supra) to the aforesaid effect that there is no need for examination of the son if statement of the landlord is all pervasive,

complete and believable. In this view of the matter, the petitioners cannot derive any advantage to their contention from the judgment in **Rajiv Gupta's case** (supra). Similarly, in **Brij Bhushan and another's case** (supra), the Court has commented adversely qua non-examination of son of the landlord for whose requirement personal necessity was pleaded as the eviction application did not contain pleadings regarding non-occupation of any other building and vacation of any such building without sufficient cause after commencement of the Act. The tenant had raised a specific plea as to ownership of shops of landlord and one shop being lying vacant which was not controverted by filing replication. In those circumstances, this Court held that Ashu Singla, for whom requirement of personal necessity was pleaded, never stepped into the witness box to face the test of cross examination as to whether he was in possession of any other property. However, in the case at hand, no such controversy with regard to the respondent or his son being in possession of any other building or having vacated any such building after commencement of the Act is raised or involved. That being so, judgments relied upon by counsel for the petitioners have got no bearing on the facts of the case at hand.

There cannot be any quarrel with the settled position in law laid down in **Shiv Sarup Gupta's case** (supra). It has been consistently held by the Courts that requirement projected by the landlord must be bona fide and genuine. A mere wish or desire to turn out a tenant from tenancy premises can never become a ground for eviction of a tenant for whose protection the Act has been enacted by the Legislature.

As an upshot of discussion made hereinbefore, it is difficult to accept that requirement of tenancy premises set out by the respondent-landlord is not genuine and bona fide or the same is merely a wish or

desire to seek eviction with some ulterior purpose to serve. In this view of the matter, I do not find any patent illegality or material irregularity in findings recorded by the Authorities below, warranting intervention in exercise of revisional jurisdiction.

For the foregoing reasons, the petitions fail and are accordingly dismissed in limine. No order as to costs.

**AUGUST 13, 2018**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | yes/no |
| Whether reportable        | : | yes/no |