

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6748 of 2014 (O&M)

Date of Decision: 31.05.2018

Narinder Kumar Mehra @ Malhotra and another

...Petitioners

VERSUS

Pammi Thakur Bias

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.K. Chopra, Sr. Advocate with
Mr. Ankit Midha, Advocate
for the petitioners.

Mr. R.K. Batta, Sr. Advocate with
Mr. Mandeep K. Sajjan, Advocate
for the respondent.

SURINDER GUPTA, J.

This is revision against order dated 05.07.2014 passed by Appellate Authority, Chandigarh whereby order dated 30.09.2010 passed by learned Rent Controller, Chandigarh dismissing the petition filed by respondent-Kuldeep Chand Thakur seeking ejectment of Krishan Lal Mehra (since deceased) from demised premises, was set aside and tenant (revision-petitioner) was ordered to be ejected. (Revision-petitioner is legal heir of tenant-Krishan Lal Mehra while respondent-Pammi Thakur Bias is legal heir of landlord-Kuldeep Chand Thakur).

2. The case of respondent-landlord, in brief, is that the demised premises i.e. SCF No. 31, Sector 18-C, Chandigarh was let out to Krishan Lal Mehra at the monthly rent of ₹1200/- per month excluding water and electricity charges. After his retirement, respondent-landlord has settled in United States of America (USA). He had only one daughter, namely,

Pammi Thakur Bias, who is a doctor and is married to Daljit Singh Bias, resident of USA. He sought ejectment of petitioner from demised premises for his personal *bona fide* need, which has been incorporated in para 2A of the petition and the same is reproduced as follows:-

“2A. That the petitioner in order to cherish and honour wishes of his wife has decided to give this SCF to run Charitable Pediatric Medical Care center to cater to the needs of the poor and down trodden children of Chandigarh and the nearby areas in the memory of his wife. In this respect, the petitioner has written a letter to the Chairman of the Trinity Health Care Charitable Trust, to allow them to use the said premises for the said charitable purposes for the needs of the poor and down trodden children of the Chandigarh and the nearby areas. Trinity Health Care Charitable Trust is a registered Trust under the Indian Trust Act. The copy of the letter written by the petitioner is annexed as P-1. Since the above mentioned Trinity Health Care Charitable Trust is running the charitable medical activities successfully very well in the area of Punjab, so the petitioner decided to allow the above-mentioned Trust to use the said premises for the charitable purposes as the object of the Trust are noble which are reproduced herein below:-

- (i) To provide medical care through the clinics with full dignity.*

- (ii) *To help improve the level of medical education.*
 - (iii) *To plan and develop projects with maximum social and cultural impact.*
 - (iv) *The Trust is organized exclusively for charitable, education, medical and scientific purposes, within the premises of Section 501 (C)(3) of the IRS, Code or corresponding section of any future Federal Tax Code.*
 - (v) *To procure land and develop facilities thereupon.”*
3. *That the petitioner has been showered all the blessings by the Almighty and is a well to do person. So is the daughter of the petitioner and his son-in-law, who has made fortunes in USA. The petitioner's daughter and his son-in-law have now decided to pass rest of their life in charitable work by rendering medical faculties (sic facilities) and services to the deprived lot of Punjab and Chandigarh. In the circumstances, the petitioner's daughter and his son-in-law have decided to set up a charitable Hospital in village Karkalla, District Hoshiarpur to improve health care to the indigent population of Punjab. The said daughter of the petitioner and son-in-law has also decided to set up a mobile Hospital so as to render medical facilities to the rural population of Punjab. It has also been decided to set up a Children Clinic i.e. Pediatric center in SCF No.*

31, Sector 18-C, Chandigarh. To achieve the above said purpose, the funds have been arranged and a sum of ₹30,01,305/- is lying in the saving bank account no. 01190011917 in the State Bank of India. Huge funds have also been arranged in USA to facilitate the achievement of the above said purpose. The petitioner who has only one child and is in advance stage really cherish and appreciate the noble aim and cause of his daughter and son in law and has decided to provide the premises in question i.e. SCF No. 31, Sector 18C, Chandigarh to her daughter for the above said purpose. The petitioner's daughter would immediately set up a Children Clinic in the premises in question as soon as the same is vacated or the respondents are evicted in accordance with the law. In the above said circumstances, the requirement of the petitioner and that of the daughter in respect of the tenanted premises is urgent and compelling. The petitioner and even his daughter or his son-in-law is not in possession of any other non-residential premises where such medical center can be set up nor they have vacated any such premises after the enforcement of the Rent Restriction Act.....”

3. The respondent-landlord also took the plea that petitioner has started using first and second floor of the demised premises for residence in violation of terms and conditions of the sale of building by Estate Officer,

Chandigarh, as such, has changed the user of premises and has also not paid the rent from October, 1999.

4. Revision-petitioner has alleged that the demised premises was let out to M/s Capital Building Store of which petitioner-Narinder Kumar Mehra @ Malhotra is only 'partner' and he is tenant in individual capacity. He also challenged the need of demised premises as projected by the respondent-landlord. Petitioner contradicted the plea of respondent-landlord that he had been using first and second floor of the demised premises for residential purposes. He also gave details of payments of rent made by him from time to time.

5. Learned Rent Controller, Chandigarh dismissed the petition with observation that need of the demised premises as projected by the respondent-landlord is not proved.

6. Not satisfied, respondent-landlord filed appeal before Appellate Authority where the judgment passed by learned Rent Controller was reversed and revision-petitioner was ordered to be ejected from the demised premises.

7. I have heard learned counsel for parties and perused the lower Court record with their assistance.

8. Need projected by respondent-landlord for the demised premises is to set up a charitable project in the demised premises to fulfill wishes of his wife, who intended to run a charitable pediatric medical care center to cater to needs of poor and down trodden children of Chandigarh and nearby areas. In order to achieve this object, respondent-landlord has taken assistance of "Trinity Health Care Charitable Trust", which is carrying on charitable medical activities successfully in some areas of

Punjab. Respondent-landlord has alleged that he is a well to do person and has been showered all the blessings by the Almighty. His daughter, who is a doctor and his son-in-law are settled in USA and have made fortunes there. Now they have decided to devote rest of their life for charitable work by rendering medical facilities to deprived lot of Punjab and Chandigarh. In order to achieve their aim, they have decided to set up a charitable hospital at village Karkalla, District Hoshiarpur and have also decided to set up a mobile hospital to render medical facilities to rural population of Punjab.

9. To achieve the above purposes funds of ₹30,01,305/- were arranged which were lying in saving bank account no. 01190011917 in the State Bank of India and huge funds have also been arranged in USA to facilitate the achievement of above said project. On vacation of demised premises, daughter of respondent-landlord will immediately set up children's clinic for charitable purposes and requirement of demised premises was immediate and urgent for landlord/his daughter.

10. Learned Rent Controller discarded the need as projected by respondent-landlord on following grounds:-

- (i) The respondent-landlord has not placed on record any document and has not examined any witness to corroborate his assertion regarding wishes of his wife to set up a charitable hospital.
- (ii) Establishing of charitable Trust does not amount to *bona fide* requirement of the respondent-landlord.
- (iii) Wife of respondent-landlord died in the year 1996 and from the date of death of his wife till filing of this petition in the year 2001 respondent-landlord had not

taken any step to establish any other charitable Trust.

- (iv) Respondent-landlord has claimed himself to be managing trustee of the Trust but this fact is not so mentioned in the trust deed.
- (v) Trustees of Trinity Health Care Charitable Trust have not authorized respondent-landlord to file present petition.
- (vi) Photographs regarding activities of Trust placed on file were not duly proved.

11. During appeal, respondent-landlord died and his daughter was brought on record as his legal heir.

12. Learned counsel for the revision-petitioner has argued that need of the demised premises as projected by respondent-landlord does not fall in the category of personal *bona fide* necessity as the ejectment of revision-petitioner from the demised premises has not been sought by respondent-landlord for his own use. He is seeking ejectment of the revision-petitioner for the need of Trust to set up a children clinic i.e. pediatric center in the demised premises. Law does not permit ejectment of the tenant for the need as projected by respondent-landlord. The object of East Punjab Urban Rent Restriction Act, 1949 (for short 'Rent Act') is not to allow landlord to seek ejectment of the tenant on mere wish and desire of landlord. It is his personal *bona fide* need which is to be seen. Respondent-landlord has not come up with any plea that he or his daughter wants to use this property for their personal *bona fide* necessity and learned Rent Controller has rightly discarded the need as projected by respondent-landlord with the observation that ejectment of the tenant on the ground as

projected by respondent-landlord is not admissible under the law. The Trust for whose need ejectment of revision-petitioner has been sought, is already providing health services. Trust has never passed any resolution that it requires this premises for its own use and occupation. Even otherwise, the need of respondent-landlord is not *bona fide* as he had earlier entered into an agreement with revision-petitioner to sell this property to him. This shows that intention of respondent-landlord is to dispose off this building instead of setting up any charitable hospital or clinic in it. The revision-petitioner had also moved application before the Appellate Authority for permission to lead additional evidence which was not looked into on merit and was summarily rejected. Learned Appellate Authority has also not looked into the findings recorded by learned Rent Controller or overruled/set aside the same while accepting the appeal and ordering ejectment of revision-petitioner from the demised premises. Learned Appellate Authority has observed that respondent-landlord wants to gift or donate the demised premises to Trust to run a charitable clinic and this observation of Appellate Authority is beyond pleadings. The entire emphasis of respondent-landlord is on wish of his wife, which he wants to fulfill after her death. The Trust was created only 60 days before filing of this petition. There is no evidence of wish of wife of respondent-landlord, who had died in the year 1996. The respondent-landlord has also died and his wish stood terminated with his death and now his daughter can seek ejectment only on the ground of her personal *bona fide* necessity for which she can file separate petition. Learned Appellate Authority has nowhere discussed or observed that need as projected by respondent-landlord is *bona fide*. Even during life time and after death of respondent-landlord his

son-in-law had been sending e-mails to revision-petitioner for sale of demised premises. He wanted to produce those e-mails on record, which were very material to ascertain genuineness of need as projected by respondent-landlord but learned Appellate Authority has wrongly declined production of additional evidence.

13. Learned counsel for revision-petitioner has argued that Appellate Authority has committed error while setting aside the well reasoned order of learned Rent Controller.

14. Learned counsel for the respondent-landlord has argued that ejectment of revision-petitioner was sought on the ground of personal *bona fide* necessity to set up a charitable clinic for down trodden in the society. Starting of social work is not a pious wish but a need of the hour. Respondent-landlord has never projected his need to gift away the property to Trust but he intended to take assistance of the Trust to run a charitable institution. Appellate Authority even if has made any observation in this regard, the same is neither case of respondent-landlord nor was projected in this petition. He required the demised premises for himself and his daughter, who intend to set up a children's clinic in the demised premises to treat the children of poor, needy and down trodden.

15. First question which arises for consideration in this case is as to whether the need as projected by respondent-landlord falls in the category of personal *bona fide* necessity of the landlord.

16. Before proceeding further, it will be relevant to have a look on provisions of Section 13 of Rent Act which provides that a landlord can seek ejectment of a tenant from a residential or non-residential building on the ground of his personal *bona fide* necessity.

17. Section 13 (3) (a) of the Rent Act reads as follows:-

“13. Eviction of tenants:-

(1) & (2) xx xx xx xx

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

(i) in the case of a residential “or a scheduled” building if -

(a) he requires it for his own occupation;

(b) he is not occupying another residential “or a scheduled” building “as the case may be” in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area....”

18. The first question, which arises for consideration in this revision is as to whether findings of learned Appellate Authority that respondent-landlord required the demised premises for his own use has any basis? The word “for his own use” has not been defined under the Rent Act. This word as used in Section 13 (3) (a) of the Rent Act has been given interpretations from time to time so as to include the need of family members like son, daughter, daughter-in-law etc. as the need of tenanted premises for his own use by landlord-respondent. In this case, respondent-landlord is well to do Non-Resident Indian, who as a gesture of his thanks to Almighty, wish to serve down trodden in the society and to start a

trodden children of Chandigarh and nearby areas to fulfill wish of his wife, who died in the year 1996. Learned Rent Controller while discarding the need of demised premises as projected by respondent-landlord has observed that “respondent-landlord has not placed on record any document or examined any witness to corroborate his assertion regarding wishes of his wife for setting up of a charitable hospital”. The second reason recorded by learned Rent Controller is that Trustees of Trinity Health Care Charitable Trust have not authorized the respondent-landlord to file present petition. Both the above observations of learned Rent Controller are not only untenable but are against pleadings and evidence on record. Firstly, respondent-landlord while appearing as PW-1 has categorically stated that it was the wish of his wife to set up a charitable clinic in the disputed property. Being the husband, respondent-landlord was best person to depose regarding the wish of his wife and no other evidence either oral or in writing was required to prove this fact. Observation of learned Rent Controller that no documentary evidence has been produced and witness has been examined to prove the wish of wife of respondent-landlord, is not only erroneous but against evidence on record. Even otherwise, if respondent-landlord in order to cherish and honour the last wish of his wife has decided to start a free medical treatment center for children of poor people in the demised premises, he could do this of his own as well. In this mission, even his daughter has taken initiative and demised premises is also required by her to start a pediatric center. Learned Rent Controller has not looked into this aspect while making above observations.

19. It appears that learned Rent Controller was under the impression that present petition has been filed by the Trust and respondent-

landlord had not been authorized by the Trust to file this petition. This observation is against facts and pleadings because respondent-landlord has not filed this petition for and on behalf of any Trust. From perusal of petition, it is clear that respondent-landlord and his daughter wanted to start charitable pediatric medical care center and for running this center he intended to take assistance/services of Trinity Health Care Charitable Trust. The premises was to be provided to Trust for use for charitable purposes. He had written a letter to the Trust to this effect. His daughter and son-in-law, who are from medical profession, have decided to help in charitable work by rendering medical facilities to needy persons. Respondent-landlord had relied on above Trust as it was providing medical help to needy persons free of cost in different villages around Nabha in Punjab and has produced photographs to this effect on record. These photographs have been rejected by learned Rent Controller as well as by learned Appellate Authority on the ground that the same have not been duly proved. These photographs are not the basis of this case and have been produced on file only for reference regarding the services to society being provided by the Trust. As per Trust deed, copy of which has been placed on file as Ex. P-1, this Trust (Trinity Health Care Charitable Trust), H. No. 656, Sector 11, Chandigarh alongwith other charitable objects has one of the object as follows:-

“(iv) The Trust is organized exclusively for charitable, education, medical and scientific purposes, within the premises of Section 501 (C)(3) of the I.R.S. Code or corresponding section of any future Federal Tax Code.”

20. The Trust was created for the benefit of poor and down trodden

and to pursue philanthropic and welfare activities. The respondent-landlord had written letter dated 15.06.2000 to Chairman of the Trust, which reads as follows:-

“I, Kuldip Chand Thakur s/o Late Sh. Hukan Chand Thakur, am the sole owner of Shop-cum-Flat no. 31, Sector 18-C, Chandigarh. Pursuant to the wishes of my wife Smt. Kamlesh Thakur, I hereby allow the permanent use of said building by Trinity Healthcare Charitable Trust for its use as a Medical Facility for the purpose of providing Medical Care to Children and others needy of such help. No rent will be charged for this use from the Trust.

Should you require additional information or any clarification, please do not hesitate to contact me.”

21. PW-2 Puran Chand, who is a driver by profession, is engaged with Trinity Health Care Charitable Trust at Nabha. He has stated that Trust runs a mobile van since 2003 in Nabha and surrounding villages to provide medical aid and medicines to poor and needy persons. One doctor, one attendant accompany him at the time of visiting villages for medical check up. All the medical equipment were fitted in the mobile van. Daughter and son-in-law of respondent-landlord had also been accompanying him in mobile van and they were also looking after the affairs of Trinity Health Care Charitable Trust. Civil Hospital, Nabha had provided space to them for treatment of needy and poor patients.

22. The above evidence shows that neither credentials of Trust, which is providing medical services to poor, needy and down trodden can be doubted nor intention of respondent-landlord and his daughter. His

daughter and son-in-law are already engaged in providing medical services to the needy and poor persons. In case **Rajnish Jain and others vs. Krishan Kant, 2010 (1) PLR 275**, landlord had sought ejectment of tenant to set up office of his foundation, which was founded in USA, in the shop under tenancy of a tenant at Mukerian, Hoshiarpur as he intended to provide benefit of his foundation to his native motherland. The landlord in that case had gone to USA and settled there. He had set up a foundation with intention to coordinate, cooperate and participate with other non-qualified, non-profit common religious, charitable, scientific, literary and educational concerns for the betterment and well being of the society in general. His need was found to be *bona fide* and ejectment of the tenant was ordered.

23. In case of **Neera Kheti vs. Sadhu Singh, 2013 (2) RCR (Rent) 236**, landlord required the premises for opening of hospital in the name of his wife. He had pleaded that his daughter-in-law was running a nursing home in Southhall, England and landlord wanted to set up a hospital in the property in dispute. The need of landlord was held as *bona fide*. In this case, landlord-respondent requires the demised premises to provide medical aid to children of down trodden and poor person in the society. In order to achieve this noble cause, his daughter and son-in-law have come forward and he intended to take assistance of a charitable Trust. From the testimony of PW-2 Puran Chand, it is proved that daughter and son-in-law of respondent-landlord are involved in providing medical aid to needy and poor people in the society. Though, learned Appellate Authority has observed that respondent-landlord wants to gift this property to Trust however, this observation of learned Appellate Authority is not as per spirit of pleadings of landlord. Reasons recorded by learned Appellate Authority

are to be read in proper perspective. Respondent-landlord wanted to give this property for use by charitable Trust and to achieve the noble cause his wife aspired and to fulfill her wish. The need of respondent-landlord and his daughter is genuine and *bona fide* and falls in the category of requirement of demised premises for his own use, as such, this argument of learned counsel for revision-petitioner that need as projected by respondent-landlord does not fall in the category of personal *bona fide* necessity has no merit. Observations of learned Rent Controller on this issue that the ground on which ejectment of revision-petitioner has been sought is not admissible under the law, are also not sustainable and are perverse.

24. Here this fact is to be kept in mind that it is not the Trust (Trinity Health Care Charitable Trust), which is seeking ejectment of revision-petitioner. The Trust is nowhere in picture except for providing assistance to respondent-landlord to provide medical aid to children in the area of Chandigarh and around by setting up a children's clinic i.e. pediatric center in the demised premises. No resolution of the Trust authorizing respondent-landlord to file this petition was required under the law. Much stress has been put on the fact that respondent-landlord at one point of time had entered into an agreement to sell this property to revision-petitioner. However, the point raised by learned counsel for revision-petitioner need not be discussed in detail in view of the fact that suit for specific performance of agreement filed by revision-petitioner has already failed and even learned Rent Controller has observed that status of petitioner remains as tenant and being the landlord, respondent was competent to seek ejectment of revision-petitioner from the demised premises for his personal *bona fide* need.

25. Before learned Appellate Authority, revision-petitioner had moved an application for permission to lead additional evidence to prove that Daljit Singh Bias, son-in-law of respondent-landlord, had been negotiating for settlement of dispute and for sale of the property with revision-petitioner through e-mails. This application was declined by learned Appellate Authority with the observation that evidence sought to be produced is not relevant for adjudication of appeal. Revision-petitioner intended to place on record certain e-mails written by son-in-law of respondent-landlord. Those e-mails have no legal or evidentiary value as son-in-law was not having legal capacity to negotiate with revision-petitioner. He was neither the attorney of respondent-landlord nor ever authorized to enter into negotiations to resolve the issue with revision-petitioner.

26. This argument of learned counsel for revision-petitioner that wish of respondent-landlord comes to an end with his death, as such, order passed by learned Appellate Authority ordering ejectment of revision-petitioner from the demised premises no more survives, is also without merit. It is no more *res integra* that need of landlord is to be seen on the date of filing of petition and not at any subsequent stage. The law in this regard is well settled. Hon'ble Apex Court 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 has observed that crucial date for deciding the *bona fide* requirement of the landlord is the date of application for eviction.

27. In the 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, chose and decide as to what type of business he has to carry on and which premises is suitable for his business and tenant has no role to suggest as to where landlord should do that business.

28. Respondent-landlord has also sought ejectment of revision-petitioner from the demised premises for the need of his daughter and has taken plea in petition itself that his daughter and son-in-law are in medical profession and they have now decided to pass rest of their life in charitable work by rendering medical facilities and services to the deprived lot of Punjab and Chandigarh. They have also decided to set up a charitable Hospital in village Karkalla, District Hoshiarpur to improve health care of the indigent population of Punjab. Respondent-landlord required the demised premises for his daughter, who intends to set up a children's clinic in the demised premises as soon as it is vacated by revision-petitioner. It is evident that need of demised premises is not only for landlord-Kuldeep Chand Thakur (since deceased), but also for *bona fide* need of his daughter.

29. As a sequel of my above discussion, I am of the considered opinion that observations of learned Rent Controller while dismissing application and declining the need as projected by respondent-landlord are without merit, illegal, perverse and have been rightly set aside by learned Appellate Authority. Though, learned Appellate Authority has also gone bit astray while observing that respondent-landlord intended to gift this premises to the Trust but respondent-landlord had never expressed his desire to gift away the property to Trust. He only wanted to take help of the Trust in fulfilling his project and to give premises to the Trust without payment of rent. Above observations are to be looked into in proper perspective and *bona fide* need of respondent-landlord has been rightly

upheld by learned Appellate Authority.

30. As a sequel of my above discussion, I find no merit in this revision-petition and the same is dismissed.

31. The application (CM-13258-CII-2015) seeking fixation of mesne profit is dismissed being not pressed.

May 31, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***