

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

1. CR No.936 of 2012 (O&M)
Date of decision : 30.10.2018

Chameli Devi (deceased) through her LRs

...Petitioner(s)

Versus

Arun Kumar and others

...Respondents

2. CR No.259 of 2011 (O&M)
Date of decision : 30.10.2018

Chameli Devi (deceased) through her LRs

...Petitioner(s)

Versus

Parmod Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ashish Soi, Advocate for the petitioner(s).

Mr. Vgaurav Sethi, Advocate for the respondents.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved on 16.10.2018.

The judgment is being released.

By this judgment, revision petitions bearing CR No.936 of 2012 and CR No.259 of 2011, filed by the landlady through her legal heirs against two different tenants challenging the orders passed by the Rent

Controller affirmed by the Appellate Authority, shall stand disposed of, as issue which needs determination is common. Counsel for the parties are also agreed that both these petitions can be disposed of by a common judgment.

The issue which needs consideration is whether a portion of the residential premises situated in the State of Haryana governed by the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as “the Act of 1973”), can be got evicted on the ground of bona fide requirement, even if the portion of that premises was let out for residential purposes and the requirement of the landlord is for non-residential premises particularly where it is established that portion of the tenanted premises although part of residential premises, can be put to non-residential use. In the present case, the eviction of the tenants has been sought from two rooms which are part of house no.333, Jogi Mandi, Kacha Bazar, Ambala Cantt. It is the case of the petitioner that her son Prem Chand is going to retire in April 2006, after serving in MES and he is having technical know-how of the electrical goods and, therefore, he wants to open a shop dealing in electrical items from the rooms in question. There were other grounds on which the eviction was sought but those have not been pressed at the time of the arguments.

The tenant contested the petition and pleaded that the requirement of the landlord is not bona fide.

Learned Rent Controller as well as the Appellate Authority have chosen to dismiss the revision petitions on the ground that residential premises let out for residential purpose cannot be got evicted for non-

residential use.

It may be mentioned here that the eviction of tenants in urban areas of the State of Haryana are governed by the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as “the Act of 1973”). The building can be got evicted for bona fide requirement of the landlord or his normal emanations. Although, as per Section 13(3) of the Act of 1973, the eviction of the tenant on the ground of bona fide requirement of the landlord was available only with respect to residential building. However, after following the judgment passed by Hon'ble the Supreme Court in the case of **Harbilas Rai Bansal Vs. The State of Punjab and another, (1996-1) SCC 1**, the word 'residential' as appearing in the Act of 1973 has also been declared unconstitutional in the judgment titled as **Ved Parkash Gupta Vs. State of Haryana, (1997-2) PLR 775**, which was affirmed by the Division Bench of this Court in Letter Patent Appeal titled as **State of Haryana through Chief Secretary Civil Sectt. Haryana Chandigarh Vs. Ved Parkash Gupta and another, (1999-1) RLR 689**, therefore, the word 'residential' is to be overlooked while considering the ground of eviction.

This Court has found two judgments of the Coordinate Bench has taken a view that the residential premises cannot be got evicted for non-residential purpose while dealing with the provisions of the Act of 1973. Reference can be made to the judgments passed by this Court in **Dinesh Kumar Vs. Ram Singh and others, (2006-1) PLR 645** and **State Bank of Patiala Vs. S. Zulzuaoar Singh Virk and others, (2003-2) PLR 112**.

It would be appropriate to compare the provisions of the Act of 1973 and the provisions of East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the Act of 1949”) as applicable to Punjab and Chandigarh. A compare chart is as follows:-

<u>The Act of 1949 (applicable to Punjab)</u>	<u>The Act of 1973 (applicable to Haryana)</u>
2(f) "rented land" means any land let separately for the purpose of being used principally for business or trade;	2(f) "rented land" means any land let separately for the purpose of being used principally for business or trade ;
11. Conversion of a residential building into a non-residential building." No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller.	11. Conversion of a residential building into a non-residential building." No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller.
13 Eviction of tenants:- (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 building if- (a) he requires it for his own occupation; (b) he is not occupying another residential building, 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, (d) it was let to the tenant for use as a residence by reason of his being in the service of employment of the landlord and the tenant has ceased, whether before or after the commencement of this Act to be in such service or employment	Section 13(3)(a) of the Act of 1973 as it exist in statute is extracted as under:- “ 13. Eviction of tenants- (1) xxx xxx (2) xxx xxx (3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession — (a) in the case of a building, if, — (i) he requires it for his own occupation, is not occupying another building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area ;

<i>Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord.</i> <i>(i-a) in the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in Section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of Section 3 of that Act.</i> <i>Explanation – For the purposes of this sub-paragraph</i> <i>(1) the certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions; and</i> <i>(2) “family” means such relations of the landlord as ordinarily live with him and are dependent upon him;</i> <i>(ii) In case of a non-residential building or rented land, if -</i> <i>(a) He requires it for his own use;</i> <i>(b) He is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be,</i> <i>(c) He has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the urban area concerned;</i>	<i>[(ii) he requires it for use an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homeopathic Practitioners Act, 1965, or for the residence of his son who is married :</i> <i>Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act ;]</i> <i>(iii) it was let to the tenant for use as residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment ;</i> <i>Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord ;</i> <i>(iv) the tenant has already in his own possession a residential building or subsequently acquires possession of, or erects, such a building reasonably sufficient for his requirement in the urban area concerned ;</i>
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(v) he is a member of the armed forces of the Union of India and requires it for the occupation of his family and produces a certificate, from the prescribed authority referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925. that he is serving under special conditions within the meaning of section 3 of that Act,
Explanation:- For the purposes of this sub-clause “family” means such relations of the landlord as ordinarily live with him and are dependent upon him
(b) in the case of rented land, if he requires it for his own use, is not occupying in the urban area concerned for the purpose of his business any other rented land and has not vacated such rented land without sufficient cause after the commencement of the 1949 Act”

Note:- Since as per the judgment passed by this Court in the case of Ved Parkash Gupta Vs. State of Haryana, (1997-2) PLR 775, the word “residential” has been held to be unconstitutional and, therefore, struck off. Hence, while extracting the word “residential” in Section 13(3)(a) has been omitted.

Now the question which has been posed above is required to be decided with reference to the provisions of the Act of 1973 as applicable to State of Haryana.

In this regard, first judgment which has come to the notice of this Court is in the case of **Parmeshwari Devi V/s Krishan Chander, 2003 Haryana Rent Reporter 197**. In this case, the Court was dealing with the provisions of the Act of 1949 as applicable to the State of Punjab. The Court

while relying upon a previous judgment of Hon'ble the Supreme Court in the case of **Attar Singh Vs. Inder Kumar, AIR 1967 SC 773** has held that a portion of the building which was given for non-residential use cannot be got evicted for bona fide requirement of the landlord for residential purpose.

I have carefully analyzed the provisions of the Punjab Act of 1949 and the Haryana Act of 1973.

In my considered view with regard to the bona fide requirement of residential and commercial buildings, the provisions of both the Acts are not pari-materia. With respect to Haryana, the word “residential” has been held to be unconstitutional and, therefore, struck down from Section 13(3) (a) of the Act. Thus, the provisions of the Act have to be read by omitting the word “residential” in Section 13(3)(a) whereas with respect to Punjab Act, the ground of eviction of bona fide requirement with respect to non-residential building is provided separately under Section 13(3)(a)(ii) clubbed with rented land. The rented land as defined in the Act is only with respect to any land let separately for the purpose of being used principally for business or trade.

If one carefully reads the judgment passed by Hon'ble the Supreme Court in the case of Attar Singh's case (Supra), Hon'ble the Supreme Court was dealing with a case of rented land and hence governed by Section 13(3)(a)(ii). Similar was the position in the case of Parmeshwari Devi's case (Supra). However, the attention of the Court was not drawn to the basic distinction between the provisions of the Acts applicable to the State of Haryana and Punjab while deciding the cases of Dinesh Kumar (Supra) and State Bank of Patiala (Supra). In Haryana after the judgment

passed in the case of Ved Parkash Gupta, the requirement of the landlord for his own occupation is governed by Section 13(3)(a), both with respect to residential as well as non-residential buildings. Therefore, the judgments in the case of Dinesh Kumar (Supra) and State Bank of Patiala (Supra) shall be per incuriam.

In old cities, in the State of Haryana, normally there is no zoning separately for residential areas and commercial areas. With the growth of the city/urban areas, certain houses which are located on the main road, front portion thereof can be conveniently used for commercial purpose, although it may have been let out for residential purpose long time back. The landlord who requires the front portion of the house for non-residential use is deprived of the eviction unless he pleads that the premises is required for residential purposes, although, he wishes to use it for non-residential purpose. Once after the judgment in the case of Ved Parkash Gupta (supra), there is no distinction between the residential and non-residential building vis-a-vis ground of bona fide personal requirement, it shall not be correct to hold that the premises let out for residential purpose, eviction can only be sought for bona fide requirement of residential purpose only.

In the present case, in the case of Arun Kumar, it has come in evidence that one of the room is being used for repairing of the harmonium by the tenant as it is admitted that the customers come to the tenant.

Learned Rent Controller has relied upon the judgment passed by Hon'ble the Supreme Court in the case of **Umed Singh Vs. Arya Samaj Sewa Sadan, 2006(3) Civil Court Cases 724 (SC)**. In the aforesaid case,

Arya Samaj Sewa Sadan, a derivative title holder had sought the eviction of the tenant from residential premises on the ground that the building is required for running a library. Hon'ble the Supreme Court found that running a public library without any profit would not bring the same within the ambit of non-commercial use. Hence, the aforesaid judgment does not lay down as a proposition of law that the building let out for residential purpose can be got evicted for non-residential purpose.

Although, it is true that Section 11 of the Act of 1973 provides that no person shall convert a residential building into a non-residential building except with the permission in writing of the Controller. However, such permission can be taken after the building comes into the possession of the landlord. In the case of Arun Kumar, it has already come in evidence that tenant is attending to the customers from one room. Once, there is no prohibition by the Local Authority from using the premises for commercial (non-residential) purpose, the requirement of the landlady, who is no more, for her son cannot be said to be not a bona fide requirement.

In view thereof, both the revision petitions are allowed. The orders passed by both the Courts are set aside.

The tenants are granted three months time to handover the vacant possession of the premises to the landlord.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

30.10.2018

Pawan

Whether speaking/reasoned:-
Whether reportable:-

(ANIL KSHETARPAL)
JUDGE

Yes/No
Yes/No