

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

648

CR No.201 of 2003 (O&M)
Date of Decision : 14.05.2018

Baldev Singh and others

..... Petitioners

Versus

Mohan Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Malkeet Singh, Advocate
for the petitioners.

Mr. A.K.Walia, Advocate
for respondent No.1.

AJAY TEWARI, J. (Oral)

This revision has been filed against the judgment of the appellate authority reversing that of the trial Court and thereby dismissing an application for ejectment filed by the petitioners.

The main ground taken was that of personal necessity. One of the reasons which had weighed with the appellate authority was that the petitioners had not averred that they were not in possession of any other similar building nor had they vacated any similar premises after coming into the force of the Act. During the pendency of this revision, an application for amendment which was filed by the petitioners making that formal averment was allowed and the matter was referred back to the Rent Controller for taking fresh evidence and sending its report. The report of the Rent Controller has been received who has concluded that the

petitioners are not in a possession nor have vacated any similar premises after coming into force of the Act.

Learned counsel for respondent No.1 has vehemently argued that actually before even filing of the amendment application the petitioners had sold two shops and in the first place it was incumbent upon them to have mentioned this in the amendment application and secondly the Rent Controller erred in holding that they had not vacated any premises even though the petitioners had to admit that they had sold the premises.

Learned counsel for the petitioners has countered by arguing that an incomplete picture is being portrayed by the learned counsel for respondent No.1 and the actual requirement of the statute is that the petitioners should not have vacated any premises without sufficient cause. As per him the two shops which were sold had been mortgaged with the sitting tenants. One of the petitioners required money for the marriage of his daughter and those two shops were sold to the respective mortgagee-tenants. According to the counsel for the petitioners, before the sale the petitioners only had the title of the shops but the possession was with the tenants. Had it been a case where the shops had been got vacated from tenants and sold to a third person the argument of respondent No.1 could have been accepted but in the present case the shops having been sold to the sitting tenants the petitioners never came into possession thereof and consequently could never have been said to vacate them. Moreover the fact that one of the petitioner had sold it for the marriage of his daughter in any case shows that there was a sufficient cause.

In my opinion, the argument of the learned counsel for the petitioners are more weighty. As long as the landlord does not get possession of a premises he can not be said to have vacated the same. In the present case if one of the petitioners sold the shop to the sitting mortgagee-tenants for the marriage of his daughter it can not be held to dis-entitle him.

Learned counsel for the respondent has argued that non-disclosure by the petitioner was fatal and relied upon ***Ajit Singh and another Vs. Jit Ram and another-AIR 2009 SC 1999*** and on ***Manmohan Lal Vs. Shanti Parkash Jain-2014 (2) RCR (Rent) 222*** and has argued that in both these cases the Courts had held that non-disclosure of the ownership of other properties is a fatal law which must unnecessarily result in dismissal of the petition. Both these judgments were considered by this Court in CR No.4659 of 2006 titled as ***Brig. Harpreet Singh Chahal Vs. Gopal Gupta*** decided on 29.07.2015, wherein it has been held as follows :-

VIII. Nature of pleadings and practice in rent control proceedings

*12. The decision in **Ajit Singh** (supra) would alone require a proper understanding. If the Supreme Court was holding that the person who is seeking for ejectment “for his own use” actually for the need of anyone else in the family, the requirement of such other person must be spelt out under Section 13 (3)(ii) and must be understood in a proper context. It is a repeated theme in our courts and if I make an attempt to explain the Supreme Court's judgment, it is only to ensure that some clarity obtains in this grey area. It is still an issue in our courts where the petitions get to be drawn, redrawn, amended, challenged in appeal or revision only on issue of nature of pleading for bona fide requirement. The practice must stop somewhere. There is need to explain the Supreme Court*

*judgment in **Ajit Singh** (supra). At a fundamental level, for me, the rules of pleadings must be reasonably flexible before any Tribunal. Tribunalization has come with several pluses and minuses. Wherever strict procedural in approaches were frowned upon as creating new obstacles for quick and efficacious disposal, Tribunals established through enactments invariably provide for respective Tribunals to set their own procedures for trial work. We have Tribunals that abound for determining compensation for motor accidents for recovery of amounts, for financial institutions for recoveries, and son. In each one of the enactments, the authorities are granted powers to frame their own procedures. The common thread in all these legislations is to provide for powers of summoning and enforcing attendance of witnesses as vested in a court under the Civil Procedure Code. If the Civil Procedure Code were to be applied in its full force, there is no necessity to even the limit of power to exercise of summoning of witnesses. In fact Section 16 of the Punjab Rent Restriction Act contains a similar provision giving the Rent Controller a power of a civil court under the Civil Procedure Code for summoning the enforcing agencies of witnesses. This provision would have been unnecessary and otiose, if the CPC were to be applied in all its full force for any other activity as well.*

13. Pleadings are methods of ensuring that there is no vagueness left in what the parties have to prove and when issues are framed for establishing the landlord's personal need, there needs to be objective basis for assessment of that need. That basis is provided under the statutory provision in requiring the Rent Controller to examine that the landlord was not vacated any other premises and applies to a court for ejectment giving out a need for ejectment, such a landlord shall not also be a person who already has no other property vacant in the same urban area. It is, therefore, expected that a landlord sets out in the petitions or volunteers information

*about the fact that he owns no other building which is vacant or he has not vacated any other building only in order to claim ejectment. If the parties go to trial on all aspects relating to the bona fide need and it is brought out in evidence that there is no other property which is vacant or the landlord has not vacated any other property to claim ejectment, then that itself should be taken as proving the bona fides. I will, therefore, rest the judgment in **Ajit Singh** (supra) to be confined to secure proof of what the law requires and if that proof is available by parties joining that issue with all adequate materials at the trial, it ought to serve the ends of justice.”*

At this stage it would also be profitable to trace out the jurisprudential development of the law relating to tenancy of urban properties in India. Most of the original Rent Restriction Acts were based on an analogous statute resorted to in war-torn England during the Second World War which was framed as a response to the acute housing shortage occasioned by it. For the first three decades, Courts in India viewed landlords and their cases with distaste, even with a hint of suspicion, but thereafter the pendulum started swinging the other way. The Supreme Court recommended changes in the law to make it less landlord un-friendly but the legislation somehow never came about. The changing realities however could not be ignored and one of the first changes was when the Supreme Court recognized that *bona-fide* requirement would extend to non-residential properties also. The next tectonic shift came when a visionary appellate authority in Delhi held that an evicted tenant who wanted interim protection should have to pay for it. Ultimately this was upheld by the Supreme Court in **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd. 2005 (1) RCR (Rent)**. Then the Supreme Court held that

when a landlord claimed bona-fide requirement the Court would presume that the case set up was correct and it would be for the tenant to rebut that presumption. In a parallel development Courts also explained that the pleadings in a rent petition could not reasonably be expected to be of the standard required in a civil suit. The realization came that the bar was against that landlord who either had in his possession suitable premises or had vacated such suitable premises after the coming into force of the Act and to insist that everything had to be specifically pleaded, all the i's had to be dotted and all the t's had to be crossed would ultimately result in mistaking the wood for the trees.

In the present case also, what has come on the record is that the landlord-petitioner does own other properties but he has explained that they are not suitable for the projected use. The respondent has not led any positive evidence to show that this explanation is false.

Petition stands allowed.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

14.05.2018
Pooja sharma-I

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