

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: July 2nd, 2019

CR No. 3728 of 2018(O&M)

M/s Krishna Book Depot and others

---Petitioners

vs.

Amrit Sagar Puri

---Respondent

CR No. 3914 of 2018(O&M)

M/s Inder Hotel and another

---Petitioners

vs.

Amrit Sagar Puri

---Respondent

CR No. 3919 of 2018(O&M)

Vijay Mahajan @ Vijay Kumar Gupta and another

---Petitioners

vs.

Amrit Sagar Puri

---Respondent

Coram: HON'BLE MRS. JUSTICE REKHA MITTAL

Present Mrs. Avnish Ahlawat, Advocate
for the petitioners in CR-3728 of 2018

Mr. Munish Puri, Advocate
for the petitioners in CR-3914 of 2018

Mr. Sanjay Majithia, Sr. Advocate with
Mr. Vishal Munjal, Advocate
for the petitioners in CR-3919 of 2018

Mr. M.L.Sarin, Senior Advocate
with Ms. Himani Sarin, Advocate
for the respondent

Rekha Mittral,J.

This order will dispose of CR Nos. 3728, 3914 and 3919 of 2018 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from CR No. 3728 of 2018.

Challenge in the present petition has been directed against consistent findings of fact recorded by the courts whereby the petitioners have been evicted from the tenancy premises i.e. shop situated in main bazar Pathankot shown in red colour and marked with letters 'ABCD' in the site plan, on the premise that the same is required by the respondent for his personal use and occupation. The Rent Controller decided the eviction application on 13.2.2014 and directed the petitioners to hand over vacant possession of the shop within a period of two months. The appeal preferred by unsuccessful petitioners/tenants did not find favour with the Appellate Authority, Pathankot and order of eviction passed by the Rent Controller came to be affirmed without any variance.

The facts relevant for disposal of the present petition are that respondent Amrit Sagar Puri sought eviction on the ground of personal necessity with the averments that total area of land under

entire building measures about 9 marlas situated in revenue estate of Sarai within the municipal limits of Pathankot. The respondent is post graduate in Economics and retired as Chairman/Managing Director, State Bank of India, from Bombay in the year 1987. He is fully fit and wants to run his own business along with his family members. He has four daughters out of whom two are married. The two unmarried daughters are post graduates in English and History. The respondent has about Rs. 25-30 lakhs in cash at his disposal for investment purposes. Further on request for credit facilities, the State Bank of India vide letter dated 14.2.2005 has advised that they will grant credit facilities to the tune of Rs. One Crore only against his moveable/immovable securities. The respondent has every right to evict the petitioners for his personal use and occupation.

The respondent has further averred that entire building is more than 60 years old and constructed as poor 'B' class structure. He wants to make more useful utilization of the property in order to earn economic advantages by demolition of the present building and reconstruction of the same in the shape of a multi storeyed commercial complex in the name and style of 'Puri Towers' with a semi basement, ground floor and three upper floors under the open hall concept on modular basis. The respondent and his family members can very well look after and manage the entire set up to their entire satisfaction. The respondent has a self occupied house situated in Kathui bazar,

Sujanpur, a municipal township near to Pathankot. The respondent and his ancestors originally belong to Pathankot and Sujanpur area district Gurdaspur. The respondent remained posted out station in connection with his service conditions. For the rest of his life, the respondent and his family members in a bona fide manner require the premises in dispute for their self occupation as it will serve the purpose of their economic development and well being. The respondent and his family members are not occupying in the urban area concerned any other land or the premises which can be used for business and other allied purposes.

The petitioners-respondents filed reply and controverted all the allegations on the basis whereof respondent sought eviction of the petitioners on various grounds including bona fide personal requirement.

The Rent Controller framed issues, reproduced in para 3 of the order passed by the said court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the Rent Controller negated plea of the respondent for seeking eviction on the grounds except that the tenancy premises is required for bona fide use and occupation of the respondent-landlord and the petitioners were directed to hand over vacant possession, noticed hereinbefore.

Counsel for the petitioners has assailed the impugned order

by making few submissions. It is argued that the respondent has retired as Chairman/Managing Director from State Bank of India, Bombay. He, his wife and two unmarried daughters are permanent residents of New Delhi living in one of the posh localities namely Maharani Bagh. The respondent himself or his unmarried daughters never lived in Pathankot or in vicinity of the city. The respondent visited Pathankot only for the purpose of selling his properties as admitted in his cross examination. One of the daughters visited Pathankot only once/twice as stated by her in her cross examination. It is argued with vehemence that in view of the above, it is difficult to accept contention of the respondent that tenancy premises is required for use and occupation by the respondent much less the same is his bona fide requirement.

Another submission made by counsel is that the respondent has not disclosed as to how the building is to be put to use. His contention that he wants to make it more useful in order to earn economic advantages by demolition and reconstruction in the name and style of 'Puri Towers' indicates that he wants to reconstruct the property and sell the same. It is vehemently argued that making more useful utilization of the property to earn economic advantages can not be treated as bona fide need of the landlord to seek eviction on that premise. Counsel would argue that as per materials on record, the respondent had been selling big chunks of land/properties in the urban area. If he has a desire for his economic advantages, nothing prevented

him from constructing malls on those properties which were more suitable for the purpose. She has pointed out various documents on record evidencing sale of different properties vide Exs. R1 and R16 to 21, situated in village Sarai District Pathankot where property in dispute is also situated. In addition, it is argued that even respondent sold some properties in Sujanpur, admitted by him in his cross examination. The respondent also has some other land/plots in respect whereof he is admittedly negotiating for the purpose of sale. It is argued with vehemence that conduct of the respondent selling various properties situated in village Sarai and Sujanpur District Pathankot, and his having other plots/landed property in the same area for which negotiations for sale are in the process goes a long way to create dent in the projected plea that demised premises is required for bona fide use and occupation.

Counsel would argue that both the courts have not adverted in detail to the evidence on record particularly the facts elicited in cross examination of the respondent, therefore, eviction order passed by the Rent Controller and affirmed in appeal cannot be allowed to sustain. It is further argued that revisional jurisdiction of this court is quite wide and it is open for the court to re-appreciate the evidence for the purpose of examining correctness, legality and propriety of the impugned orders. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Ram Dass vs.**

Ishwar Chander and others 1988(1) Rent Control Reporter 625

wherein in paras 10 and 11, it has been held to the following effect:-

“10. On the first contention that the revisional powers do not extend to interference with and upsetting of findings of fact, it needs to be observed that, subject to the well-known limitations inherent in all revisional jurisdictions, the matter essentially turns on the language of the statute investing the jurisdiction. The decisions relied upon by Shri Harbans Lal, deal, in the first case, with the limitations on the scope of interference with findings of fact in second-appeals and in the second, with the limitation on the revisional powers where the words in the statute limit it to the examination whether or not the order under revision is "according to law." The scope of the revisional powers of the High Court, where the High Court is required to be satisfied that the decision is "according to law" is considered by Beaumont C.J. in [Bell & Co. Ltd. v. Waman Hemraj](#), AIR 1931 Bombay 223, a case referred to with approval by this Court in [Hari Shankar v. Girdhari Lal Chowdhury](#), AIR 1963 SC 698.

11. But here, Section 15(5) of the Act enables the High Court to satisfy itself as to the "legality and propriety" of the order under revision, which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings

of facts also, though the revisional court is not "a second court of first appeal" (See Dattonpant Gopalvarao Devakate v. Vithalrao Marutirao AIR 1975 SC 1111)."

Counsel would further submit that in **Ram Dass's case (supra)**, provisions of Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (in short "the Act") was the subject matter of discussion and decision, therefore, the judgment can safely be applied to the present case wherein the revision has been preferred by the petitioners by invoking Section 15(5) of the Act.

Counsel representing the respondent has supported concurrent findings of fact based upon materials on record. To refute contention of the petitioners that revisional court either has unlimited powers to interfere in the orders passed by the courts or its jurisdiction is akin to jurisdiction of appellate court/appellate authority, counsel has submitted that judgment in **Ram Dass's case (supra)** was considered in detail by a five Judge Bench of Hon'ble the Supreme Court, in view of reference made in **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh (2014) 9 SCC 78**. It is argued that in para 32,33,43 and 44, the court has held to the following effect:-

"32. Insofar as the three-Judge Bench decision of this Court in Ram Dass is concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centers round the following observation in

Ram Dass, "...that jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also..." It is suggested that by observing so, the three-Judge Bench in Ram Dass has enabled the High Court to interfere with the findings of fact by re-appreciating the evidence. We do not think that the three-Judge Bench has gone to that extent in Ram Dass. The observation in Ram Dass that as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law". This is expressly stated in Ram Dass. Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. Ram Dass does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the Appellate Court or the Appellate Authority or such power is co-extensive with that of the Appellate Authority or that the concluded finding of fact recorded by the original Authority or the Appellate Authority can be interfered with by the High Court by re-appreciating evidence because revisional court/authority is not in agreement with the finding of fact recorded by the Court/Authority below.

Ram Dass does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to re-appraise or re- assess the evidence for coming to a different finding contrary to the finding recorded by the Court/Authority below. Rather, it emphasises that while examining the correctness of findings of fact, the revisional Court is not the second Court of first appeal. Ram Dass does not cross the limits of revisional court as explained in Dattonpant.

33. Rai Chand Jain that follows Ram Dass also does not lay down that the High Court in exercise of its power under the Rent Control Act may reverse the findings of fact merely because on re-appreciation of the evidence it has a different view on the findings of fact. The observations made by this Court in Rai Chand Jain must also be read in the context we have explained Ram Dass.

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re- appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled

to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

44. We, thus, approve the view of this Court in Rukmini as noted by us. The decision of this Court in Ram Dass must be read as explained above. The reference is answered accordingly.”

With regard to challenge qua findings of bona fide need of tenancy premises, it is argued that landlord is the best judge of his need and tenant is nobody to dictate him as to how he can satisfy his need by using alternative accommodation. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Sarla Ahuja vs. United India Insurance Company Limited (1998) 8 SCC 119.**

Counsel would further argue that tenancy in favour of the petitioners was created sometime in early 1950. Before filing the instant eviction application, neither the respondent nor his predecessor ever initiated eviction proceedings or sought enhancement of rent. The

respondent is 92 years old and he filed eviction application when he was about 80 years of age. It is argued with vehemence that if the respondent and his family comprising of his wife and two unmarried daughters did not need the building in question for the purpose of constructing a multi storeyed mall under the name and style 'Puri Towers', there was no reason for him to file eviction application knowing fully well that litigation may take number of years to culminate finality. It is further argued that in eviction application filed on the ground of bona fide need, the court shall proceed with an assumption that the need is genuine and bona fide unless proved otherwise. It is argued that contention of the petitioners that after constructing multi storeyed mall, the respondent wants to sell the same is not based upon materials on record but is the result of assumptions and presumptions of the tenant who wants to retain possession of the property till infinity despite having used the same at a meager rent for the past about 70 years, therefore, on equitable considerations as well, the petitioners have no case to challenge concurrent findings of fact.

With regard to sale of certain land/plots, it is argued that as the respondent has sought eviction from commercial building, he is neither obligated in law to allege or prove that he is not owner or in possession of a residential building or land in the urban area concerned. According to counsel, sale of land/plots or ownership of other land/plots in the same urban area would not enure to benefit of the petitioners as the respondent has sought eviction from a non-residential building. In addition, it is argued that nothing has been proved on record that besides the building in question,

the respondent is either owner much less in possession of any other non-residential building in the urban area concerned. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Prem Narayan Barchhiha vs. Hakimuddin Saifi 1999(2) RCR 148** and **Attar Singh vs. Inder Kumar 1967 SCR 50**.

I have perused the records and considered rival submissions made by counsel for the parties and judgments cited at bar.

Before advertng to the submissions made by counsel for the parties, it is pertinent to mention that the Constitution Bench of Hon'ble the Supreme Court in **Hindustan Petroleum Corporation Limited's case (supra)** while dealing with provisions of Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act. 1973 (in short "1973 Act") mutatis mutandis the same as Section 15(5) of the 1949 Act, relevant in the present context, has held 'Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. **Ram Dass's case (supra)** does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the Appellate Court or the Appellate Authority or such power is co-extensive with that of the Appellate Authority or that the concluded finding of fact recorded by the original Authority or the Appellate Authority

can be interfered with by the High Court by re-appreciating evidence because revisional court/authority is not in agreement with the finding of fact recorded by the Court/Authority below.

Reverting to the case at hand, the respondent-landlord retired from State Bank of India in the year 1987 when he was holding the highest position. He did not file eviction application till 2006. He alongwith his family consisting of his wife and two unmarried daughters is residing in Delhi and maintaining his residence in Maharani Bagh, New Delhi. There is nothing on record suggestive of the fact that the respondent is involved in any commercial activity in Delhi. The fact that respondent did not initiate eviction proceedings immediately after his retirement and filed the eviction application about 20 years thereafter can be construed in favour of the respondent with regard to his need being bona fide and genuine. It is also pertinent to mention that counsel for the petitioners has not disputed submissions made by counsel for the respondent that since creation of tenancy way back in early 1950, no eviction application was filed either by the respondent or his predecessor in interest meaning thereby that the landlord never caused any harassment to the tenant nor ever sought enhancement of rent.

Counsel for the petitioners has submitted that the respondent wants to construct a multi storeyed mall and thereafter sell the same. It is difficult to accept to reason that a person at such an advanced stage of life would construct a multi storeyed building by spending huge amount from his own sources as well as raising loan just for the purpose of selling the

property at a higher rate, when otherwise this contention is not borne out either from facts elicited in cross examination of respondent and his daughter or evidence adduced by the petitioners. In this view of the matter, contention raised by petitioners to create doubt qua bona fide need of the respondent is not meritorious and accordingly rejected.

Much stress has been laid by counsel for the petitioners with regard to sale of land/plots as per documents Exs. R1 and R16 to R21 and negotiations for sale of some other land/plots by the respondent. Indisputably, the shop in question is a part of commercial building occupied by three tenants against whom the respondent has filed three separate eviction applications. As per provisions of the Act, the landlord is obligated in law to plead or prove that he is not in possession of any other such building in the urban area concerned nor has he vacated the same without sufficient cause after commencement of the Act. The respondent was cross examined at length but no such fact has been brought forth that either he is in possession of any such commercial building in the urban area concerned or he has vacated such building after commencement of the Act. The Act authorizes a landlord to seek eviction from residential building, non-residential building and rented land and all the three have been defined separately in Section 2 of the Act. Counsel for the petitioners has failed to cite any judgment that if the landlord is in possession of land or has sold such land, the same can be of consequence qua eviction from a non-residential building. In this view of the matter, the petitioners cannot derive any advantage to their contention from the factum of sale of certain

land/plots by the respondent or his intention to sell other such like properties. This apart, nothing has been brought on record that any such land/plot is in the close vicinity of the building in question or has the same commercial potential if a mall is constructed there.

Counsel for the petitioners is not in a position to dispute that landlord is the best judge of his need and tenant is nobody to dictate as to how he can satisfy his need by using some other alternative property. Neither a tenant nor a court can curtail the genuine and bona fide need of the landlord by suggesting him that he can accommodate himself or serve his purpose in some other manner. That being so, contention raised by the petitioners in view of sale of certain properties i.e. land/plots or negotiations for sale of some other land/plots would carry no weight, to interfere in consistent findings recorded by the Courts. On the contrary, as has been rightly argued by counsel for the respondent that if a landlord is seeking eviction from a non-residential building, he is not even obligated to plead or prove that he is not in possession of a residential building or land in the same urban area. Moreover, if the respondent/landlord has decided to settle his affairs in his advancing age particularly considering that his family consists of only female members including his wife and two unmarried daughters, conduct of the landlord in disposing of his land/plots can neither be condemned nor can create an obstacle in seeking eviction from a non-residential building for the purpose of bona fide use and occupation. Analyzed from any angle, I do not find an error much less material irregularity or illegality in the impugned orders, warranting

intervention.

In view of what has been discussed hereinbefore, finding no
merit, the petitions fail and are accordingly dismissed with costs.

(Rekha Mittal)
Judge

July 2nd , 2019
paramjit

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