

In the High Court of Punjab and Haryana at Chandigarh

CR- 4392 of 2014(O&M)

Date of Decision: March 7th, 2019

Central Bank of India

---Petitioner

vs.

N.K.Vij and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Ravi Sharma, Advocate and
Mr. Parwnjeet Singh, Advocate
for the petitioner

Mr. Arun Jain, Senior Advocate
with Mr. Amit Jain, Advocate
for the respondents

Rekha Mittal, J.

The present petition directs challenge against order dated 23.4.2014 passed by the Appellate Authority, Chandigarh whereby appeal against order dated 11.5.2011 passed by the Rent Controller, Chandigarh has been allowed and the petitioner has been ordered to be evicted from tenancy premises i.e. House No. 322 Sector-21-A, Chandigarh on the ground of bona fide personal necessity of the respondent.

Sh. N.K.Vij, the respondent filed an application under Section

13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) for eviction of the petitioner-Central Bank of India (in short 'the bank”) from tenancy premises on the grounds inter alia that the petitioner changed user of demised premises by converting the same into a residential one as against using it for running a training school for its employees; the petitioner has sublet the demised premises to Sh. R.N.Swami, Zonal Manager without consent of the respondent; the first floor of the house is in dilapidated condition and it has diminished the value and utility thereof and the respondent requires the demised premises for bona fide use and occupation. It is averred that family of the respondent consists of four married daughters who are settled at different places in India. They occasionally visit the respondent alongwith their families. The respondent requires the premises for his personal use and occupation in the evening of his life. The wife of the respondent is owner of SCO Nos. 3033 and 3034, Sector-22-D, Chandigarh. The first and second floors of aforesaid SCOs were got vacated from the tenants by wife of the respondent. A business centre was started at the said floors which is being managed by the respondent and his wife. The respondent is undergoing treatment in PGI and his wife is getting treatment from Fortis Hospital, Mohali. They want to settle in Chandigarh, city beautiful which is free from pollution and environment friendly for old age people. The respondent has no other residential accommodation within urban area of Chandigarh nor he had vacated any such building after commencement of the Act.

The petitioner filed reply and raised preliminary objections inter alia that the eviction application is not maintainable and the same is

bad for misjoinder of parties. It has denied all the averments on the basis whereof the respondent has sought eviction of the petitioner.

The controversy between the parties led to framing of following issues by the Rent Controller, Chandigarh vide order dated 25.10.2007:-

1. Whether there exists relationship of landlord and tenant between the petitioner and the respondent? OPP
2. If the present issue is pressed, whether the respondent is liable to be evicted from the premises on personal requirement? OPP
3. Whether the suit is bad of misjoinder of parties? OPR
4. Relief

Later, in compliance with directions of the Appellate Authority vide order dated 10.10.2010, following issues were framed vide order dated 4.11.2010:-

- 3(a) Whether the utility of the demised building has been diminished on account of improper user of the demised premises by the respondent, what is the effect of the same on this ejectment petitioner? OPP
- 3(b) Whether the respondent No. 1 has changed the user of the demised premises other than the purpose of which it was let out without the consent of the landlord?OPP
- 3(c) Whether the respondent has sublet the demised premises to respondent No. 2 without the written/oral consent of the landlord concerned? OPP
- 3(d) If issue No. 3(a) to 3(c)are successfully proved by the

petitioner, then whether the respondent is liable to be evicted on the ground of subletting, change of user, material impairment of the building in question? OPP

Having heard counsel for the parties in the light of materials on record, the Rent Controller answered issue No. 1 against the respondent and as a consequence, the eviction application was dismissed without recording any findings in respect of the grounds on which the respondent had sought eviction of the petitioner. The Appellate Authority set aside findings of the Rent Controller on issue No. 1 and allowed eviction of the petitioner on the ground of bona fide personal necessity of the respondent-landlord.

Counsel for the petitioner has assailed the impugned order by raising legal and factual dispute. It is argued with vehemence that as the Rent Controller did not record any findings on merits of the grounds for eviction of the petitioner bank, if the Appellate Authority had reversed findings of the Rent Controller on issue No. 1 qua relationship of landlord-tenant between the parties, the matter should have been remitted to the Rent Controller for decision of remaining issues particularly if the petitioner is liable to be evicted on the ground of bona fide personal requirement, change of user, subletting and materially impairing value and utility of the building in question. In support of his contention, he has relied upon Division Bench judgment of this Court **Krishan Lal Seth vs. Pritam Kumari 1961 PLR 865, Raghu Nath Jalota vs. Romesh Duggal and another 1979 (2) RCR (Rent) 501**. Further reference has been made to Single Bench judgments of this Court **Shri Brij Lal Puri and another vs. Smt. Muni Tandon alias Urmala 1979(1) R.C.R.(Rent) 190, Om Parkash and others vs. Smt.**

Tirshala and others 1979(2) RCR (Rent) 278, Tulsi Ram vs. Mohan Krishan 1979(1) Rent LR 308, Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Shri Raghunath Sahai 2003 (2) RCR (Rent) 148 and Ajaib Singh vs. Vijay Kumar 2015(4) RCR (Civil) 831.

Counsel has challenged eviction of the petitioner on the ground of bona fide personal necessity. It is argued that no evidence has been adduced by the respondent that he is getting medical treatment from PGI Chandigarh or his wife is getting treatment from Fortis Hospital, Mohali. In his cross examination, Sh. N.K.Vij has admitted that he never stayed in Chandigarh for the purpose of alleged business being carried in SCO Nos. 3033-3034, Sector-22-D, Chandigarh. Sh. N.K.Vij is approximately 90 years old, therefore, there is no question of his doing any business at Chandigarh and requiring the demised premises for his residence. The last submission made by counsel is that the Appellate Authority has accepted contention of the respondent as a gospel truth without adverting in detail to the facts elicited in cross examination of Sh. N.K.Vij, thus, findings of the Appellate Authority qua eviction of the petitioner on the ground of personal necessity are liable to be set aside.

Counsel for the respondent, on the contrary would urge that as there is no provision in the Act authorizing the Appellate Authority to remand the case to Controller for entirely fresh decision and the Appellate Authority can make only further enquiry either by itself or through Controller, no fault can be found in the order impugned whereby the Appellate Authority has allowed eviction of the petitioner on the ground of personal necessity, in the light of materials on record. In support of his

contention, he has placed reliance upon Division Bench judgment of this Court in **Raghu Nath Jalota's case (supra)**. Further reference has been made to judgment of this Court **Smt. Urmila Devi vs. Davinder Singh 2014(1) RCR (Rent) 242, Mohd. Hussain vs. Mohd. Ashgar 2017(3) RCR (Civil) 877.**

With regard to eviction on the ground of personal necessity, it is argued that there is no challenge to testimony of Sh. N.K.Vij that he is doing business on first and second floors of SCO Nos. 3033-3034, Sector -22-D, Chandigarh but he has to go back to Jalandhar as he cannot stay alone because of his handicap and needs assistance of his wife. It is further argued that the Appellate Authority has accepted plea of bona fide personal necessity by appreciating the legal and factual aspects in right perspective. According to counsel, there is nothing wrong if the respondent in the evening of his life wants to live in Chandigarh for the purpose of attending to his business in Sector-22-D, Chandigarh as well as to enjoy good environment of city beautiful and friendly for retirees.

I have heard counsel for the parties, perused the paper book and records.

Tenancy in favour of the petitioner was created in the year 1972. Later, registered lease deed was executed on 23.6.1976 between the previous owner and the petitioner for five years with effect from 12.6.1976. Sh. N.K.Vij filed the eviction application in March 2007. The eviction application was initially decided by the Rent Controller on 27.7.2009. The order passed by the Rent Controller was set aside by the Appellate Authority vide order dated 19.10.2010 and the matter was remitted to the Rent

Controller with the direction to settle the appropriate issues and then give opportunity to both the parties to lead evidence and to decide the matter afresh. As has been noticed hereinbefore, in pursuance of the direction issued by the Appellate Authority, the Rent Controller framed additional issues 3(a) to 3(d) vide order dated 4.11.2010. However, after framing of additional issues and the case being fixed for evidence of the respondent, the petitioner absented from the proceedings and as a consequence, the case was decided ex parte vide order dated 11.5.2011 whereby the Rent Controller negated plea of the respondent with regard to relationship of landlord-tenant between the parties and accordingly dismissed the eviction petition.

The question that invites consideration is, whether the Appellate Authority committed material irregularity or illegality for not remitting the case to the Rent Controller to decide other issues after findings on issue No. 1 (relationship of landlord and tenant) were reversed by the Appellate Authority.

Counsel for the parties have referred to the Division Bench judgment of this Court in **Raghu Nath Jalota's case (supra)** wherein this court has answered the reference, reads thus:-

“Whether the appellate authority under Section 15(3) of the East Punjab Rent Controller Act, 1949, has the jurisdiction to remand the whole case to the Rent Controller for decision afresh is the sole, though meaningful, question which falls for determination in these two civil revision petitioner before us on a reference. Directly linked therewith is also the issue of the

correctness of the view expressed first by Grover J., in Civil Revision No. 54 of 1957-*Moti Ram s/o Dault Ram vs. Ram Sahai S/o Chamba Ram, decided on April 29, 1958*, and its categoric affirmance by the Division Bench in *Shri Krishan Lal Seth v. Shrimati Pritam Kumari, 1961, PLR 865.*”

The Bench, on a detailed consideration of provisions of the Civil Procedure Code particularly Order 41 Rules 23 and 25, Section 156 (3) of the Act and judgments of this Court *Shri Chand and others vs. State of Haryana, 1978 Punjab Law Reporter 660*, *Krishan Kumar vs. Baldev Singh and others 1974 Current Law Journal 233*, *Shri Ram Dutta Gupta vs. The Financial Commissioner, Haryana Chandigarh and another, 1976 Punjab Law Reporter 791*, *Moti Ram son of L.Daulat Ram Khatri of Sangrur vs. Ram Sahai son of Chamba Ram Mahajan of Sangrur, Civil Revision No. 641 of 1957 decided on April 29, 1958*, *Smt. Krishan Lal Seth's case (supra)*, *Din Dayal vs. Ram Chander C.R.No. 169 of 1958, decided on September 29, 1958*, *Lajpat Rai vs. Harkishan Das, C.J.No. 676 of 1962, decided on April 5, 1963*, *Shri Brij Lal Puri and another's case (supra)*, *Tulsi Ram's case (supra)*, has held in para 12, quoted thus:-

“It was then faintly sought to be argued before us on behalf of the respondent that despite the fact that [Section 15\(3\)](#) does not spell out any such power; there is nevertheless an inherent power to remand the matter for a decision afresh by the Appellate Authority. In view of what has been said above. this argument cannot hold water even for a moment. Once it is held that the

legislature or the framers of the Act. by express or implied implication excluded the power of remand from the ambit of the appellate power under [Section 15\(3\)](#), then no question of any such inherent power vested in the Appellate Authority can arise. Holding otherwise would be introducing by the back-door what the legislature had expressly excluded by barring the front one. It is then to be recalled that the Controller or the Appellate Authority are not a court of law. They are only persons designata under the Act. Therefore, any theory of these quasi-judicial tribunals exercising any inherent powers is of little validity. Equally it deserves highlighting that there is no provision even remotely analogous to Section 151 of the Civil P. C. in the Act from which any such power could possibly be derived. Therefore, in the context of a special tribunal, the concept of inherent appellate power does not at all appear tenable. It has been held not once, but repeatedly that even the very right of appeal is a mere creature of the statute and there is no fundamental right of appeal from an original forum. Once it is so, then obviously where a special statute provides an appellate forum, its powers must be limited within the narrow confines of what has been conferred on it by the statute. As noticed already there is no inherent power of appeal nor can it be said that a special Appellate Tribunal has inherent powers other than what are expressly laid upon it by the provision creating it. Reference in this connection may be made to the elaborate Division Bench judgment in [Shri Chand v. State of Haryana](#), (1978) 80 Pun LR 660.

In view of enunciation laid down in **Raghu Nath Jalota's case** (**supra**), the petitioner cannot derive any advantage to its contention from

judgments rendered by Single Benches of this Court, some of which have already been considered by the Division Bench in **Raghu Nath Jalota's case (supra)** namely **Shri Brij Lal Puri and another's case (supra)** and **Tulsi Ram's case (supra)**. In **Om Parkash and others' case (supra)**, this Court, in view of peculiar facts and circumstances that the ejectment application was dismissed at the initial stage, thought it just and proper that the Rent Controller decides the ejectment application on merits, in accordance with law and uphold the order of remand passed by the Appellate Authority. Counsel for the petitioner did not make any submissions as to how he can draw similarity between the peculiar facts and circumstances prevailing in **Om Parkash and others' case (supra)** viz-a-viz the case at hand. This apart, **Om Parkash and others' case (supra)** was decided by the Single Bench before the decision was rendered by the Division Bench in **Raghu Nath Jalota's case (supra)**.

In **Balwant Rai Tayal's case (supra)** the order of remand was upheld as the Rent Controller had not decided the ejectment petition by taking into consideration complete merits of the case. For that reason, the Court adopted the course accepted by this Court in **Om Parkash and others' case (supra)** and exercised revisional jurisdiction under Sub Section 6 of Section 15 of the Act.

In **Ajaib Singh's case (supra)**, order of remand by the Appellate authority was upheld as fresh evidence was to be taken in the peculiar circumstances because the case came to be dismissed without any evidence. In this view of the matter, the petitioner cannot derive any advantage to its contention from the judgments in **Om Parkash and others'**

case (supra), Balwant Rai Tayal's case (supra) and Ajaib Singh's case (supra). However, in **Raghu Nath Jalota's case (supra)**, it has been held that there is no provision in the Act for remand of the case to Controller for decision afresh and Appellate Authority can make only further enquiry either by itself or through Controller. In the given scenario, no fault can be found with the procedure followed by the Appellate Authority by making further enquiry by itself as to if claim of the respondent seeking eviction on various grounds including personal necessity is meritorious or otherwise. That being so, I do not find an error much less illegality in the procedure followed by the Appellate Authority, proceeding to decide other issues on the basis of evidence on record since findings of the Controller on Issue No. 1 qua relationship of landlord-tenant were reversed.

Reverting to merits of the case, counsel for the petitioner has not advanced any arguments to challenge findings of the Appellate Authority accepting plea of the respondent that there exists relationship of landlord-tenant between the parties, pertaining to issue No. 1. The parties had already adduced evidence before the case was initially decided by the Rent Controller in the year 2009. After the matter was remanded to the Rent Controller for decision afresh by framing of additional issues, the petitioner opted to be absent from the proceedings and was proceeded against ex parte. Similarly, no arguments have been advanced by counsel for the petitioner to challenge the order whereby the petitioner bank was proceeded against ex parte and the case has been decided ex parte. After the case was remanded to the Rent Controller by the Appellate Authority vide order dated 19.10.2010, there is only evidence of Sh. N.K.Vij by way of an affidavit. As the

petitioner bank was proceeded against ex parte, there is no challenge to testimony of Sh. N.K.Vij with regard to the premises being required for bona fide use and occupation of N.K.Vij and his family.

This brings the court to the issue of eviction of the petitioner on the ground of personal necessity of the respondent. I have gone through statement of Sh. N.K.Vij recorded prior to remand of the case by the Appellate Authority vide order dated 19.10.2010 and his affidavit by way of examination-in-chief filed after the case was remitted to the Rent Controller. There is no challenge to statement of Sh. N.K.Vij that he is doing business on first and second floors of SCO Nos. 3033-3034, Sector-22-D, Chandigarh, owned by his wife. He has clearly stated that he has to go back to Jalandhar as he cannot stay alone in Chandigarh because of his handicap/disability. Once it is proved that the landlord is running business in Chandigarh, neither the Court nor the petitioner can raise a doubt about his projected need of residential accommodation in Chandigarh. The Appellate Authority has rightly held that need is to be seen through glasses of landlord and the tenant is nobody to dictate him the terms. The premises is required by the respondent who wants to live peacefully in city beautiful, in the late evening of his life. Counsel for the petitioner has failed to point out any materials that the respondent is doing any business or involved in any commercial activity at Jalandhar. As such, his need cannot be entertained with doubt even if he has failed to adduce evidence of getting medical treatment for himself or his wife from Chandigarh. There is no evidence worth consideration led by the petitioner to counter case of the respondent with regard to his bona fide requirement of tenancy premises, in

occupation of the petitioner-bank for the last about five decades. That being so, I do not find any material irregularity much less illegality in the order impugned.

For the going reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs. The application filed by the respondent for assessment of mesne profits stands disposed of with liberty to the respondent to take recourse to appropriate remedy in law, for determination and recovery of use and occupation charges since the order of eviction was passed by the Appellate Authority.

(Rekha Mittal)
Judge

March 7th, 2019
paramjit

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