

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

Civil Revision No. 5961 of 2015 (O&M)

Date of decision : January 09, 2019

Lajpat

.....Petitioner

Versus

Ashok Kumar and others

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amar Vivek, Advocate and
Ms. Adrija Das, Advocate
for the petitioner.

Mr. Manohar Lall, Advocate
for the respondents.

LISA GILL, J.

The petitioner - tenant is aggrieved of judgment dated 21.01.2012 passed by the learned Rent Controller, Rewari as well as judgment dated 29.04.2015 passed by the learned appellate authority, Rewari. Learned Rent Controller has allowed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act (for short – 'the Act') filed by the respondents and ordered ejectment of the petitioner from the demised premises. Appeal filed by the petitioner has also been dismissed by the learned appellate Authority, Rewari vide judgment dated 29.04.2015.

Brief facts necessary for adjudication of the case are that petition under Section 13 of the Act was filed by the respondents seeking eviction of the petitioner from the demised premises i.e. a shop forming part of the building duly described in the petition. Eviction of the tenant was sought on the grounds of non-payment of arrears of rent, building having been rendered unfit and unsafe for human habitation and for bona fide personal necessity. It was pleaded that respondent No. 1 – Ashok Kumar son

of Jagan Nath required the premises for his son Saurabh who wanted to set up the business of Computers (Hardware). Saurabh was claimed to be gaining proficiency in Computer (Hardware) working at Gurgaon. It was further pleaded that respondent – Ashok Kumar also got premises adjacent to the demised premises vacated. The said premises too were in a dilapidated condition and the landlords wanted to demolish both the shops and construct anew. It was further averred that the landlords would construct two shops for business, in which Saurabh and Harish would conduct their business. Demised premises were claimed to be 100 years old, constructed with old stones. The building was stated to be in a dilapidated condition, unfit and unsafe for human habitation. Site plan depicted the demised premises as well as the adjacent shop, which was vacated by order of the court of competent jurisdiction. Judgment dated 20.03.2004 passed by the learned appellate Authority in the said proceedings was placed on record.

Petition was resisted by the present petitioner while taking various preliminary objections and refuting the averments on merits. It was stated that the demised premises were taken on rent from Jagan Nath i.e. the father of respondents No. 1 to 3, 5 to 7 and husband of respondent No. 4 in the present petition. After the death of Jagan Nath, rent was being paid to Harish Kumar. Rate of rent was contested besides the petitioner's liability to pay the house tax. It was denied that the present petitioner was in arrears of rent or that the premises in question were dilapidated, unfit and unsafe for human habitation. Personal necessity of the landlords was also denied while stating that Saurabh son of Ashok Kumar was working at a Call Centre namely Convergys India Private Limited at Gurgaon. Moreover, the

landlords were alleged to have two other shops at Railway road, Rewari. Business of shoes and slippers was carried on in one shop and in other shop business of grocery was carried out. It was, thus, pleaded that bona fide personal necessity of the landlord did not exist. Dismissal of the petition was prayed for.

Following issues were framed by the learned Rent Controller:-

1. Whether the respondent is liable to be ejected on the ground mentioned in the petition ?OPP
2. Whether the petition of the petitioners are not maintainable in the present form?OPD
3. Whether the petitioners have concealed the true and material facts from the court?OPD
4. Whether the petitioner have got no locus standi and cause of action to file the present form?OPD
5. Relief.

Evidence was led by both the parties to prove their respective stands.

Learned Rent Controller concluded that the petitioner was not in arrears of rent. However, the petition was allowed on the ground of personal bona fide necessity of the landlords as well as the building in question being unfit and unsafe for human habitation. Appeal filed by the present petition was dismissed by the learned Appellate Authority, Rewari vide judgment dated 29.04.2015.

Aggrieved therefrom, this revision petition has been filed.

Learned counsel for the petitioner vehemently argues that both the learned courts below have grossly erred in allowing the petition filed by the respondent – landlords under Section 13 of the Act. Findings returned against the petitioner are claimed to be perverse and opposed to the

evidence on record. It is contended that admittedly there are various co-owners/co-sharers and it cannot be ascertained as to who is the landlord in this case. Moreover, once the landlord Jagan Nath in the proceedings against the tenant – Dinesh in the adjacent shop took a specific stand that the shop in question had come to the share of his brother Kishan Lal and he had no concern whatsoever with the present demised premises, it was not open for the respondent – landlords to claim eviction of the petitioner. It is further argued that the respondent – landlords did not approach the Court with clean hands inasmuch as the details of the family settlement have not been revealed. Judgement dated 20.03.2004 passed by the learned appellate Authority, Rewari has been produced only with a view to prove that the building in question was unfit and unsafe. Furthermore, bona fide need of the landlord is not proved on record. Saurabh son of Ashok Kumar, it is proved, is gainfully employed at Gurgaon. RW6 Jassu Rustogi, Assistant Accountant, Convergys India Private Limited has been examined by the petitioner to prove the same. It is ardently argued that the landlord's son already being engaged in a vocation may not necessarily be a bar to claim personal bona fide necessity but in the present case the landlords are guilty of concealment of material facts. Therefore, their petition should be dismissed on this ground alone.

Learned counsel for the petitioner further submits that the evidence on record does not prove the building to be in a dilapidated condition or unfit and unsafe for human habitation. It is urged that the fact that the building is still in place despite passage of so many years since the filing of the eviction petition in the year 2007, is testimony to the fact that the premises are not unfit and unsafe for human habitation in any manner.

Moreover, reliance was wrongly placed by the learned courts below upon the reports which were produced in the proceedings qua the adjacent shop.

Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in **Piara Lal v. Kewal Krishan Chopra 1988 (2) RCR (Rent)32** and the judgments of this Court in **M/s Labh Chand Om Parkash v. Krishan Lal 1990 (1) RCR (Rent) 214, Sohan Lal (Died) through his LRs v. Amar Nath 1992 (1) RCR (Rent) 543 and Jita Ram v. Sham Lal 1992 (2) RCR (Rent) 687**. It is , thus, prayed that this revision petition be allowed. Judgements dated 21.01.2012 passed by the learned Rent Controller, Rewari as well as judgment dated 29.04.2015 passed by the learned appellate authority, Rewari be set aside. Consequently, petition under Section 13 of the Act filed by the landlord – respondents be dismissed.

Learned counsel for the respondents per contra submits that both the learned courts below have rendered reasonable and logical judgments based on proper appreciation of the evidence on record. It is submitted that the scope of interference in revisional jurisdiction is limited. The court would interfere only in case of apparent perversity, illegality or misreading of evidence. It is submitted that the tenant has no concern with the inter-se settlement between the co-sharers. Moreover, the petitioner – tenant has accepted that the shop in question was taken on rent by him from Jagan Nath i.e. predecessor-in-interest of the present respondents landlords. Thereafter he was paying rent to Harish Kumar i.e. respondent No. 2 in the present revision petition, therefore, relationship of the landlord and tenant between the parties cannot be disputed. If at all, grievance is to be made, it would be by the other co-sharers, who incidentally have not raised any

objection in this case. It is further submitted that a specific issue was framed before the learned Rent Controller whether the landlords have concealed true and material facts from the Court (issued No. 3) but the same was not pressed by the petitioner. Therefore, the petitioner cannot agitate the same at this stage. Moreover, personal bona fide necessity of the landlords is clearly proved on record. Ashok Kumar PW3 as well as Saurabh (AW2) have clearly deposed in this respect. Furthermore, the dilapidated condition of the building rendering it unfit and unsafe for human habitation is also duly proved on record. It is, thus, prayed that this petition be dismissed.

Heard, learned counsel for the parties and have gone through the record with their able assistance.

Eviction of the petitioner has been ordered on the ground of personal bona fide necessity of the landlords and the building being unfit and unsafe for human habitation. It is not in dispute that the present shop forms part of a building in which another shop adjacent to the demised premises was ordered to be vacated at the instance of Jagan Nath. Judgment dated 20.03.2004 passed by the learned appellate authority, Rewari is on record as Ex. PX/2. The tenant in that case namely Dinesh Kumar was directed to be ejected inter alia on the ground that the premises were rendered unfit for human habitation. Photographs taken by AW3 Sanjeev were duly proved on record. The said photographs reveal the condition of the demised premises. AW7 Raj Kumar had been appointed as a Local Commissioner in the earlier proceedings titled 'Jagan Nath and Dinesh' decided on 20.03.2004. Report Ex. AW7/1 by Raj Kumar, Advocate is duly proved in this case as well. It is reported that there are cracks in the north wall, projection has been damaged. Building is reported to be unfit and

unsafe for human habitation.

Another report AW4/1 by the building expert has also been proved by Pukshkar Raj Gupta AW4. After giving details of the condition of the building, it is specifically opined that the shop in question had outlived its life, thus, is totally unfit and unsafe for human habitation beyond repair. All the walls were reported to have lost their strength due to seepage in the walls. South wall was found tilted by six inches, ceiling had become like a pond with all the points and ceiling points losing their intactness. Learned Rent Controller has rightly held that no reliance can be placed on report Ex. RW5/1 submitted by Nand Kumar Nagpal i.e. the building expert examined by the tenant. Nand Kumar Nagpal in his report has observed that the shop in question is structurally safe and fit for human habitation. There is no sign of seepage, leakage, cracks and the walls are capable of taking a load of another three floors. It is noticed by the learned Rent Controller that this witness Nand Kumar Nagpal was confronted with his previous report Ex. PA in the case titled 'Jagan Nath versus Dinesh Kumar'. He admitted that it is not specifically mentioned in his earlier report that the premises are entirely fit for habitation. Nand Kumar Nagpal further admitted that the cracks exist on the first floor of the premises. Cross examination of the said expert reveals that he had conducted a selective inspection of the premises in question. Learned courts below have rightly not placed any reliance on his report. Moreover, it is rightly observed by both the learned courts below that one shop of the same building stood vacated on the ground that the premises is unfit and unsafe for human habitation. Admittedly, both the shops form part of the same building. There is no merit in the argument raised on behalf of the petitioner that at best it may be only the other shop

which may be unfit and unsafe for human habitation. There is nothing on record to substantiate such an averment and to prove that bifurcation of the premises is possible. To suggest that the demised premises in isolation are fit for human habitation is clearly incorrect and opposed to the evidence on record. Furthermore, it cannot be denied that a landlord is not required to wait for the building to collapse to prove that the premises are unfit and unsafe for human habitation.

Personal bona fide necessity of the landlord is duly proved by the evidence on record. Family settlement, if any, between the co-owners cannot vest the tenant with any right as suggested by the learned counsel for the petitioner. Respondent – landlords in their petition under Section 13 of the Act have clearly stated that the demised premises are required for Saurabh son of Ashok Kumar. Furthermore, even if it is accepted that Saurabh son of Ashok Kumar was not attaining proficiency in computer hardware as stated by RW6 Jassu Rustogi but was working in a call centre namely Convergys India Private Limited, Gurgaon, the same cannot by itself lead to an inference of any kind of malafide on the part of the landlords or persuade the Court to arrive at a conclusion that the personal bona fide necessity of the landlord is not made out. It is further mentioned that the landlord has got the premises adjacent to the demised premises vacated. The adjacent premises were in a dilapidated condition and the landlords wanted to demolish both the shops to construct a new. It is clearly stated that two shops would be reconstructed and Saurabh and Harish Kumar would run their respective business therein. The factum of the adjacent shop having been vacated is duly mentioned and in fact relied on by the landlords. Therefore, it cannot be said that there is any concealment by the landlords in

this respect as was vehemently argued. At this stage, it is relevant to note that learned Rent Controller has decided issued No. 3 against the tenant. Issue No. 3 i.e. pertaining to question of concealment of material facts by the landlord against the petitioner was decided while specifically observing that the tenant has not pressed this issue nor any evidence was led on this issue. Argument raised by learned counsel for the petitioner that the issue was not pressed only during 'the course of evidence' does not preclude the petitioner from raising this argument is indeed fallacious, hence rejected. Even otherwise, a perusal of the file reveals that there is no concealment or misrepresentation of the facts by the landlords which precludes them from seeking ejectment of the petitioner from the demised premisses.

It is relevant to note that the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited versus Dilbahar Singh (2014) 9 SCC 378** while examining the scope of revisional jurisdiction reiterated that power is indeed a limited one. Pure findings of fact until and unless perverse and opposed to the evidence on record should not be interfered with. It is specifically observed that

“ 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 reappraise 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.”

Learned counsel for the petitioner is unable to point out any illegality, impropriety or error of law in the impugned judgment dated 21.01.2012 passed by the learned Rent Controller, Rewari as well as judgment dated 29.04.2015 passed by the learned appellate authority, Rewari which call for any interference in exercise of revisional jurisdiction by this Court.

No other argument has been raised.

Present petition is, accordingly, dismissed.

January 09, 2019
rts

(Lisa Gill)
Judge

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