

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4627 of 2018 (O&M)

Date of Decision: 28.05.2019

Kulwinder Kumar

....Petitioner

VERSUS

Guru Ravidass Welfare Society, Paragpur

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amarjit Markan, Advocate
for the petitioner.

Mr. Vikas Bali, Advocate
for the respondent

SURINDER GUPTA, J.

This is revision against order dated 06.03.2018 passed by learned Rent Controller, Jalandhar allowing ejectment petition filed by *Guru Ravidass Welfare Society, Paragpur, Old Phagwara Road, Jalandhar* (respondent) under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (later referred to as 'the Act') and ordering ejectment of the petitioner from two shops in portion of the property in which *Gurudwara Sahib* has been constructed.

2. Case of petitioner, in brief, is that the property comprised in *khasra* nos. 709, 711 and 716 were earlier under the ownership of *Zila Parishad Mushtarka Malkan*, which was left over land after constructing the old Phagwara Road. It was transferred to *gram panchayat*. A *Gurudwara* was constructed in *khasra* no. 709 and 710 (min) (0-13) in the year 1947. This *Gurudwara* was managed by the Society. On front side of *Gurudwara* four shops were constructed and on opposite side after crossing the road Dr. B.R. Ambedkar Bhawan was also constructed by the Society.

To get the shops vacated, respondent made representation to Commissioner, Jalandhar Division, Jalandhar, who marked an enquiry to Tehsildar, Jalandhar-I, Jalandhar. On spot inspection, Tehsildar made report that the shops in dispute are part and parcel of *Gurudwara* building and petitioner is in illegal possession of the same. The respondent alleged that petitioner is tenant under the *Gurudwara Sahib* @ ₹1000/- per month for each shop and sought ejectment of petitioner on the ground of non-payment of rent and that the petitioner is a nuisance to respondent-landlord. Earlier he got an electric connection on false recommendation of *sarpanch* of the village Nangal Karar Khan by showing these shops in the area of that village. On coming to know, respondent raised objection and after enquiry the meter was disconnected. The petitioner, thereafter, lodged a false and frivolous FIR against Dharam Chand, President and other members of the respondent-society at Police Station Rama Mandi, Jalandhar. In the enquiry of said FIR, it was found that the petitioner was guilty for offences punishable under Sections 420, 448 IPC and FIR No. 184 dated 23.07.2011 was registered against him. He also filed false and frivolous suit for permanent injunction against Dharam Chand, President and other members of the society.

3. In reply, petitioner contested the claim of respondent *inter alia* pleading that petition is not maintainable; lacks required ingredients as per provisions of 'the Act'; respondent has not come to Court with clean hands and is guilty of suppressing the true and material facts from the Court and Major Dharam Chand and Mr. Sodhi Lal have no right or authority to file the present petition. On merit it was averred that a *Janj Ghar*/Community Centre was constructed on the land in question and the village people had

formed Paragpur Social Welfare and Development Committee, Paragpur to manage affairs of *Janj Ghar*/Community Centre. Four shops at the spot are part and parcel of *Janj Ghar*/Community Centre, which is managed by Paragpur Social Welfare and Development Committee, Paragpur from whom the petitioner had taken two shops on rent. The respondent has got no concern with the shops in question and wants to dispossess the petitioner from the shops in an illegal and unlawful manner. *Gurudwara Sahib* is in fact opposite to the property in question, which is alleged by the respondent to be Dr. B.R. Ambedkar Bhawan. Regarding the report of Tehsildar, Jalandhar submitted after enquiry, the petitioner alleged that the same is not binding on him as he had no authority to give direction to him for retaining or vacating the shop or pay the rent to a particular person. It was denied that the shops were let out to the petitioner at the monthly rent of ₹1000/- per month per shop. All the averments in the petition were contested, controverted and it was averred that the petitioner is not a tenant under the respondent, as such, the respondent cannot seek his ejectment as per provisions of Section 13 of the Act.

4. In rejoinder, landlord-respondent reasserted its case and contested and controverted the averments in the written statement.

5. Pleadings of parties led to framing of the issues as follows:-

1. Whether there exists relationship of landlord and tenant between the parties? OPP
2. If, issue no. 1 decided in affirmative, whether the respondent is in arrears of rent as claimed by the respondent? OPP
3. Whether the respondent is a source of nuisance? OPP
4. Whether the petitioner is not maintainable? OPR
5. Whether the petitioner has got no locus standi to file the

present petition? OPR

6. Whether the petitioner has suppressed the material facts from the court? OPR
7. Whether the petitioner has got no cause of action to file the present petition? OPR
8. Whether the site plan attached with the petition is incorrect? OPR
9. Relief.

6. Learned Rent Controller while recording findings on issue no. 1 held that relationship of landlord and tenant between parties is duly established and due to non-payment of rent as claimed by the respondent ejectment of petitioner from demised premises was ordered. Appellate Authority, Jalandhar affirmed the findings of learned Rent Controller while dismissing the appeal filed by the petitioner-tenant.

7. Learned counsel for the petitioner has argued that the only question, which calls for determination in this revision petition, is the relationship of landlord and tenant between the parties. Courts below without any evidence on record have committed grave error while recording finding that relationship of landlord and tenant between parties is duly proved. From the very beginning case of landlord-respondent is that petitioner is in illegal possession of the shops in question. Neither it was pleaded nor any evidence was produced as to when the tenancy in favour of petitioner was created. Respondent has not come up with any evidence to prove that the petitioner has ever paid rent to the respondent. He claims his tenancy under Paragpur Social Welfare and Development Committee, Paragpur. Even if he fails to prove his contention the petitioner cannot by default be held to be tenant under the respondent as has been observed by learned Rent Controller and Appellate Authority.

8. Learned counsel for the respondent has argued that in order to appreciate status of possession of petitioner over the suit property the entire evidence on record is required to be scrutinized. Firstly, this contention of the petitioner is erroneous that the shops in question are opposite *Gurudwara Sahib*. From the site plan produced on file it is apparent that these shops are part of *Gurudwara Sahib*. The petitioner is claiming his status as tenant over the suit property but is alleging that his landlord is Paragpur Social Welfare and Development Committee, Paragpur. He, however, failed to produce any evidence in this regard. There are four shops in front of *Gurudwara Sahib* out of which two are in possession of the petitioner as tenant. Learned Rent Controller and Appellate Authority have rightly appreciated the evidence on record while arriving at the conclusion that the petitioner is a tenant in the demised premises.

9. Before proceeding further, it will be relevant to have look on the observations of Hon'ble Supreme Court in **Hindustan Petroleum Corporation Ltd vs. Dilbahar Singh, 2014(9) SCC 78**, which defines the scope of interference in revision petition in concurrent findings of Courts below. Hon'ble Supreme Court in aforesaid case held as follows:-

“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 of 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.”

10. Vital question, which arises for consideration in this revision petition, is as to whether findings recorded by Courts below that relationship of tenant and landlord between petitioner and respondent are based on proper appreciation of evidence on record. The evidence produced by landlord-respondent to prove this fact requires to be scrutinized to find if the findings of fact recorded by learned Rent Controller and Appellate Authority are based on proper appreciation of fact or above authorities have misread the evidence resulting in recording of erroneous findings against the facts proved on record.

11. Firstly, I refer to pleadings of parties in Civil Suit filed by Kulwinder Kumar against Dharam Chand, Jagjit Ram and Surinder Kumar.

Maj. (Retd.) Dharam Chand is the same person through whom the present suit has been filed by *Gurudwara Ravidass Welfare Society, Paragpur*. In the suit filed by Kulwinder Kumar, he claimed possession over the disputed shops as tenant under Paragpur Social Welfare and Development Committee, Paragpur. In written statement, defendants have taken the plea as follows:-

*“On merits, it has been averred by defendants that the shops in question belong to Shri Guru Ravi Dass Ji Welfare Society and are part and parcel of Gurudwara Shri Guru Ravi Dass Ji and are being managed and controlled by the society. The Paragpur Social Welfare and development committee, forcibly and illegally tried to take forcible possession of the building of Gurudwara. The matter was also reported to Tehsildar Jalandhar-I and after conducting the inquiry it was declared that there is Gurudwara in the building in question and **Kulwinder Singh never paid any rent to the society as such is in illegal occupation of the shops which are part and parcel of the building and Gurudwara. If Kulwinder Kumar wants to retain the shops of Gurudwara on rent, he should enter into compromise with the Shri Guru Ravi Dass Ji Welfare society and pay the rent to it and if he does not want to pay the rent, then to vacate the shops and hand over possession of the same to Gurudwara committee.**”*

12. Learned Civil Judge (Junior Division), Jalandhar has also taken note of the pleadings of parties in that judgment wherein it was alleged that **“plaintiff with *malafide* intention has occupied the said shops.”**

13. In the complaint filed on behalf of *Guru Ravidass Welfare Society*, Tehsildar, Jalandhar-I, Jalandhar conducted enquiry wherein he has observed that four shops were constructed in the building of *Gurudwara*

Sahib and Joginder Pal, then President gave two shops to Kulwinder Kumar. On the basis of his enquiry (Ex. A-3) he observed that shops form part of *Gurudwara* building. ***Gurudwara* Committee does not consider Kulwinder Kumar as tenant as he never paid rent to the Committee. Gurudwara Committee alleges possession of Dr. Kulwinder Kumar as illegal and wants to get the same vacated.**

14. In support of their case, respondent examined PW-1 Maj. (Retd.) Dharam Chand, who in his affidavit tendered in examination-in-chief has nowhere stated as to when shops in question were let out to the petitioner. Though, he has alleged that respondent is tenant under *Gurudwara Sahib* at the rent of ₹1000/- per month per shop but it is nowhere stated that petitioner had ever paid rent. No copy of resolution of *Gurudwara Sahib* to let out the shops to petitioner or about payment of rent by him to respondent was produced. These facts are also missing in the pleadings in petition as well. **In his cross-examination he has stated that petitioner has been in possession of shops since 1996 without payment of rent. He has admitted that he never paid rent or had any deal or writing regarding the shop with the petitioner.** They have been requesting petitioner to account for these shops. From the statement of this witness, it is evident that respondent(s) have failed to produce any evidence on this very vital issue to prove that shops in dispute were ever let out to petitioner as tenant. Neither date of letting out the shops has come on record nor terms of tenancy or payment of rent by petitioner has been alleged or proved. In the earlier complaint and suit between the parties, status of possession of petitioner over the shops was being alleged as unlawful occupant.

15. In the petition no date of initiation of tenancy in favour of petitioner has been mentioned. Learned Rent Controller while recording finding on issue no. 1 “as to whether there is relationship of landlord and tenant between the parties” has taken note of the fact that petitioner is alleging his possession as tenant under Paragpur Social Welfare and Development Committee, Paragpur but has not produced any evidence regarding existence of said committee. It was observed that “there is sufficient oral as well as documentary evidence on record to prove that the respondent is landlord of the demised premises. Learned counsel for the petitioner has not been able to point out any oral evidence regarding creation of tenancy in favour of the petitioner or documents from the record of respondent-landlord about payment of rent by the petitioner. Another factor, which weighed before learned Rent Controller while recording finding regarding relationship of tenant and landlord between petitioner and respondent is that the demised premises is part and parcel of same building in which *Guru Ravidass Gurudwara* is situated.

16. The question, which arises for consideration, is as to whether plea of the petitioner that he is tenant of demised premises under Paragpur Social Welfare and Development Committee, Paragpur or that the demised premises is part and parcel of *Gurudwara Sahib* building could be a reason to hold relationship of landlord and tenant between the parties. From the report (Ex. A-3) of Tehsildar, it is apparent that the respondent was seeking possession from the petitioner and report of Tehsildar nowhere discloses that respondent has alleged the status of possession of petitioner over two shops as tenant under it. The testimony of PW-1 Maj. Dharam Chand further demolishes the case of respondent when he states that the petitioner

has never paid rent to respondent and respondent-society has no such talk or writing to this effect. From the evidence on record, it appears that shops in question are in possession of the petitioner. Respondent made representation before district/divisional authorities to take possession of these shops and when failed, filed this petition alleging the petitioner as tenant. Learned Rent Controller has committed grave error while recording finding that relationship of landlord and tenant between the parties is proved as the petitioner has failed to prove his tenancy under Paragpur Social Welfare and Development Committee, Paragpur. The onus was on the respondent to prove the relationship of landlord and tenant but it failed to produce any evidence in this regard. In the absence of any specific pleading regarding date when the tenancy was created, about payment of rent or production of any evidence that the petitioner ever treated the respondent as landlord, I have no option but to hold that findings recorded by learned Rent Controller that relationship of landlord and tenant between parties is proved are based on no evidence and are liable to be set aside. Learned Appellate Authority upheld findings of learned Rent Controller qua relationship of landlord and tenant between the parties on the same plea as raised before learned Rent Controller. The relevant observations of Appellate Authority are reproduced as follows:-

“On the other hand, there is sufficient oral as well as documentary evidence on record to prove that the respondent is the landlord of the demised premises. Therefore, plea regarding nonexistence of relationship of landlord and tenant raised by appellant is of no avail when there is sufficient record available on record to prove that the demised premises alongwith the Gurudwara Saheb is being managed by the respondent. Cross examination of RW1 is also very material

where he admitted that as on today the suit property is the part and parcel of the same building in which Shri Guru Ravi Dass Gurudwara is situated. He also admitted that he is not in possession of any record regarding his claim that he has been paying rent to Paragpur Welfare Society. The respondent is in possession of the property since long and said fact is also proved by PW3 who categorically deposed that as per record brought by him in Khasra No.709 and 710 on the part of property, building of Gurudwara Sahib has been constructed. The Site plan Ex.P1 was put to RW1 during his cross examination which has also been admitted by RW1 to be correct and location of the shops in dispute has also been admitted which as per site plan placed on record by the respondent Ex.P1. Therefore, it is clear that there is relationship of landlord and tenant between the parties.”

17. The above observations of Appellate Authority are not tenable as the conclusion about relationship of landlord and tenant between the parties could not be arrived at due to default on the part of petitioner in proving his tenancy under Paragpur Social Welfare and Development Committee, Paragpur.

18. From the above discussion of pleadings, facts and evidence on record, I am of the considered opinion that findings of learned Rent Controller and the Appellate Authority are based on no evidence, rather these are based on misreading of evidence and are grossly erroneous. These findings, if allowed to stand, would result in gross miscarriage of justice.

19. In view of above, I find all reasons to interfere with concurrent findings of learned Rent Controller and Appellate Authority to set aside the findings on issue no. 1 recorded by both the Courts below about relationship of landlord and tenant between the parties and consequently,

respondent is not entitled to ejectment of the petitioner as per provisions of

Section 13 of the Act.

20. As a sequel of my above discussion, this revision petition has merit and the same is accepted. The orders passed by learned Rent Controller as well as Appellate Authority are set aside and petition filed by respondent under Section 13 of 'the Act' is dismissed with cost.

May 28, 2019

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No