

THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3476 of 2012(O&M)
Date of Order:04.03.2020

Sunil Parshad

...Petitioner

Versus

Vishwa Mitter and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Mahajan, Advocate and
Ms. Prerna Malhotra, Advocate
for the petitioner.

Mr. M.L.Sarin, Sr. Advocate, with
Ms. Hemani Sarin, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

The Landlord-petitioner has filed the present revision petition against the judgment passed by the learned Appellate Authority reversing the judgment of eviction passed by the Rent Controller.

Two petitioners i.e. Late Sh Jagdish Parshad and Sunil Parshad had filed a petition under Section 13 of the Punjab Urban Rent Restrict Act, 1949 (hereinafter referred to as 'the 1949 Act' seeking ejectment of the respondents from the shop in question. The eviction was sought on following grounds:-

- (1) non-payment of rent inspite of repeated requests.
- (2) Tenants have committed such acts which have materially impaired the value and utility of the demises premises;
- (3) the premises is bonafidely required by the landlord

and his son Sunil Parshad, the petitioner herein.

It is the case of the petitioner-landlord that shop in question was given on lease in the year 1958. It is pleaded that late Sh. Jagdish Parshad (who died during the pendency of the appeal) along with his son Sunil Parshad (petitioner herein) wants to start business of trading in cloths/fabric. It is further pleaded that the petitioners, who originally belongs to Amritsar also wants to construct first floor and reside therein.

Respondents-tenants contested the rent petition. It was asserted that the requirement of the landlord is not bonafide and there has not been material impairment in the value and utility of the building.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgment passed by the courts below.

EVIDENCE

In the present case Late Sh. Jagdish Parshad appeared as AW9 whereas Sunil Parshad appeared as AW8. Jagdish Parshad had stated that he has three sons, one of them Ajay Gains is practicing as an advocate in Delhi, whereas Anil Gains is working as a government contractor for supply of crusher stone (bajri/gravel) and sand at Jammu. Sunil Parshad was also assisting his brother-Anil Gains, however, because of militancy and the notices issued by the Pollution Control Board the business of Anil Gains has come to stand still and therefore, Sunil Parshad, who was earlier helping his brother has been requested to leave.

Respondents contested the petition while asserting that the landlord does not have any bonafide requirement. It was further pleaded

that landlord has already sold two shops identically situated and therefore, the ejectment petition is not maintainable.

Learned counsel for the petitioner has submitted that it has come in evidence that Sunil Gaind has already started business of trading in cloth/fabric. Sunil Parshad on account of recession, has started purchasing cloth/fabric from Amritsar and selling it at Jammu. Hence, it was submitted that bonafide requirement of landlord still exists even after the death of late Sh. Jagdish Parshad.

On the other hand, learned counsel for the respondents asserted that the two shops were sold by the landlord as the family of the landlords is now settled in Jammu. The landlord-Jagdish Parshad was more than 80 years of old and therefore, he cannot be expected to start business.

This court has analysed the arguments of learned counsels for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

Let's first examine the reasons given by the appellate authority to reverse the judgment of the Rent Controller. Appellate authority has made following observations which according to this Court are not warranted:-

“No sane person who is leading a settled retired life with his children and grand children would dare to leave the comforts of his house and its family members and shift to a totally new place for starting a new business. Similar is the case of Sunil Gaind.”

The intention to start new business depends upon the circumstances. Primarily, the present petition has been filed for bonafide

requirement of Sunil Parshad, who was petitioner no.2 before the Rent Controller and is the only petitioner herein. It is undisputed that father can get the premises vacated for the requirement of the son. Therefore, the aforesaid observations made by the first appellate court are erroneous.

Second reasons assigned by the first appellate authority is that the present petition has been filed with malafide desire. Reliance has been placed on sale of two other premises by late Sh. Jagdish Parshad. It may be noted here that Jagdish Parshad and Sunil Parshad have appeared in evidence as AW9 and AW8. On careful reading of the aforesaid depositions, it is apparent that business of supply of crush stone/gravel and sand is in the name of Gemini Stone Crushing Company, Jammy which is exclusively owned by Anil Gaind. It has been deposed that due to militancy, the business of Crushing Stone has come to stand still or slowed down and there is notice by the Pollution Control Board against which Anil Gaind has already filed a writ petition in the High Court.

Keeping in view the aforesaid facts, bonafide on the part of landlords to file the petition cannot be doubted. It has come in evidence that Sunil Parshad has already started doing the business of purchasing the fabric from Amritsar and thereafter, sell at same Jammu. Thus, the desire of the landlord to come back to his own city and settle his son cannot be viewed with suspicion.

As regards sale of two shops, it has come in evidence that one shop was sold in the year 1992 i.e. 11 years before filing of the ejectment petition. It has also come in evidence that the aforesaid shop was an occupied shop, not in possession of the landlord. There is sale of another shop in the year 2002 in favour of Narinder Jit Singh who has appeared as

RW14 in evidence. On careful reading of the statement of Narinder Jit Singh, it becomes clear that he was a sitting tenant in possession of a shop which was in dilapidated condition located in market for footwears. He has stated that the premises in question is in the cloth market and there are number of shops on which residence been constructed in order to reside. It is the positive case of the landlord that premises is required for doing the business of trading in cloth. Hence, no malafide desire could be attributed to the landlord.

Learned first appellate authority has also observed that landlords have not filed the revision petition with clean hands. At this stage, it may be noticed here that the 1949 Act provides that if the eviction is sought on the ground of bonafide requirement, the tenants is required to plead following three facts as per sub-section (3) of Section 13 of the 1949 Act. The requirements are :-

- (1) he requires it for its own occupation;
- (2) He is not occupying any other building in the urban area concerned;
- (3) He has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area.

Hence, there is no requirement that the landlord must aver in his ejectment petition about the other properties which were owned by him or are in his possession. In this regard, reference can be made to a judgment passed by three Judge Bench of the Court in the case of **Banke Ram vs Smt. Sarasti Devi 1979(1) RCR (Rent), 594.**

In this view of the matter, it is not necessary that in each and

every case, the landlord before filing the petition must disclose details of his properties as also the properties which have been purchased or sold by him. In any case, learned counsel for the petitioner has drawn attention of this court to the judgment of the Rent Controller wherein it has been found that one shop was sold as it was in occupation of tenant in the year 1992 i.e. 11 years before filing of the ejectment petition. Landlord has stated that he was in need of money. Hence, sale of shop, 11 years before filing of the petition is not sufficient to non suit the landlord. The second premises which was sold by the landlord is located in a market dealing with footwears whereas the landlord requires the premises for opening cloth business. Still further, Narinder Jit Singh who has appeared as RW14 on behalf of tenant has admitted that he was tenant in possession and the landlord sold the property because the shop was in dilapidated condition and it was not possible to construct first floor thereon.

Keeping in view the aforesaid facts, it cannot be said that the landlords have not filed the present ejectment petition with clean hands.

Learned first appellate authority has also held that why the petition was not filed for a period of 12 years particularly when it is the case of the landlord that business of Anil Gaiind, who was supplying crushed gravel and sand had come down in the year 1989. In this regard, it may be noticed that when Sunil Parshad appeared in evidence he has specifically stated that he started doing odd jobs including trading in cloth/fabric. He has been purchasing the cloth from Amritsar and selling the same at Jammu. However, now he wants to settle in Amritsar by running business from his own shop. Still further, it has been pointed out by learned counsel for the petitioner that because of legislative amendment, the ground of bonafide

requirement with respect to a non residential building was taken away. It was only in the year 1996 when Hon'ble Supreme Court in **Harbilas Rai Bansal vs The State of Punjab & Anr, 1996(1) SCC 1** held that such classification of the building between residential and non-residential for the purpose of filing petition on the ground of bonafide requirement is unconstitutional. Thereafter, the present petition was filed.

Learned appellate authority has also observed that since Jagdish Parshad had died during the pendency of the first appeal, therefore, the case of the landlords has become weak. In this regard, it may be noted that the present petition was filed by Jagdish Parshad along with his son as petitioner no.1 and 2. Now, requirement of Sunil Parshad is already pleaded and projected. In such circumstances, it cannot be said that since landlord has died, therefore, present petition is deemed to have abated. Once the requirement of the landlord himself along with the son has been pleaded and he has appeared in evidence as AW8, the continuity of bonafide requirement of the tenant after the death of the landlord can hardly be doubted. In the facts of the case, death of Jagdish Parshad would not adversely affect the maintainability of the present petition particularly when the requirement of son Sunil Parshad petitioner herein has already been pleaded.

Learned counsel for the parties have also addressed arguments on the second ground on which eviction of the respondents has been sought i.e. Material impairment. However, on careful perusal of order dated 26.08.2010 passed by this court, while issuing notice, it is apparent that notice of motion was issued only on the ground of bonafide requirement. In any case, this court has examined the plea of the landlord with regard to

material impairment, however, find no substance therein. The structural alteration itself is not a ground for eviction. The landlord is required to prove that the tenant has impaired the value and the utility of the building or the rented land. In the present case the landlord has failed to prove that by such actions/steps of the tenant, value and utility of the rented premises has been impaired or has come down.

In view thereof, the present petition filed by the landlord is allowed. The eviction of the tenants is ordered. The tenant is granted four month's time to hand over vacant possession of the rented premises. On second ground i.e. Material impairment in the value and utility of the building, this court does not find any good ground to interfere with the findings of fact arrived at by the Rent Controller affirmed in appeal by the appellate authority.

Hence, petition is allowed.

04th March, 2020
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(ANIL KSHETARPAL)
JUDGE

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

At this stage, learned counsel representing the tenant prays that tenant may be granted some time to re-locate his business.

Keeping in view the aforesaid prayer, 4 months' time from the date of order is granted to the respondent/tenant to shift.

04th March, 2020
nt

(ANIL KSHETARPAL)
JUDGE

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