

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

CR-7797-2019 (O&M)
Date of decision : 10.01.2020

Manjit Singh

...Petitioner

Versus

Manjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mandeep Singh Sachdev, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Tenant-petitioner is in the revision against the concurrent judgments, ordering eviction in the proceedings under Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

Tenant-petitioner is in possession of the shop as a tenant. The landlord is also owner of the adjoining property. In the petition, it was pleaded that right now, he is settled in Germany. However, he intends to come back and construct a shopping complex on the entire property including the shop in question and run his business.

Both the Courts, as noticed above, ordered ejectment finding that need of the petitioner is bona fide.

Learned counsel for the tenant-petitioner has submitted that shop in question cannot be got evicted for building a shopping complex as the requirement is not the same. He relied upon the judgment passed by the

Division Bench of this Court in the case of **Dhan Devi and another Vs. Bakhshi Ram and others, 1968 PLR 913**, which is alleged to have been approved by a Three Judge Bench of this Court in the case of **Umed Singh Vs. Arya Smaj Sewa Sadan, Ballabhgarh, AIR 2003 Punjab 87**. He further submits that need of the petitioner is not bona fide as he has already constructed shopping complex in the adjoining property excluding the shop in question. In the newly constructed premises, at present, brother of the landlord is doing the business.

This Court has carefully gone through the judgment passed by the Hon'ble Division Bench in the case of Dhan Devi and another (Supra). In the aforesaid case, the land was given on lease/rent. There were three separate applications for ejectment filed by the landlord, who during the pendency of the revision petition had also died. He had pleaded in the petition that he wants to construct a building for his own use and occupation. It had also come in evidence in the aforesaid case that the landlord wishes to use the premises for his business and for his residential purpose. In those circumstances, Hon'ble the Division Bench held that the rented land could be got vacated for the purpose of running the business on the rented land and not for constructing a building thereon for his own business or trade. The relevant conclusions of the Hon'ble Division Bench are as under:-

“(vii) that the landlord can succeed in his application under Section 13 (3) (a) (ii) of the Act for obtaining possession of any rented land from a tenant only if he alleges and proves that he requires the rented land from which the tenant is to be evicted for carrying on his own business or trade on the

rented land itself. The landlord cannot succeed in a claim for ejectment under that provision if his case is that he would not use the rented land, i.e. the land separately let to the tenant, but a building to be constructed on it for his business or trade;

(viii) that the landlord cannot obtain an order against a tenant for possession of rented land under Section 13 (3) (a) (ii) on the ground that he intends to use a major portion of the land for residence and only a small portion for his office;

(ix) that rented land given to a tenant does not cease to be such land so as to defect the claim of a landlord under Section 13 (3) (a) (ii) of the Act merely because the tenant has subsequent to the commencement of the tenancy made some super-structures on the land for his own use; and”

The question before Three Judge Bench in the case of Umed Singh (Supra) was entirely different which is extracted as under:-

“Whether “his own occupation” and the “residential purpose” in relation to a corporate body/juristic person can be read in wider perspective or in stricto sensu of the dictionary meaning?”

The facts of the present case are totally different. It is not the case of the tenant that he had taken the rented land on lease. Here is a case where the petitioner had taken on lease a constructed building (a shop). Now also, the landlord wishes to construct a shopping complex by integrating/merging the tenanted shop. In other words, the lease was of a building and requirement of the landlord is also for constructing a building and integrating/merging the shop in question in a big building. In such circumstances, the judgment passed by the Hon'ble Division Bench would

have no application.

The argument of learned counsel for the petitioner that language of Clause (ii) of Sub-Section 3 of Section 13 and Section 13(3)(a) (i) of the Act is same. However, as noted above, there is fundamental difference. Before the Hon'ble Division Bench, the question was “Whether a rented land can be got vacated for constructing a building and thereafter using it?”. Whereas in the present case, a constructed building has been given on rent and the aforesaid built premises is required to be integrated/merged with another building and then used for commercial purpose. Hence, there is no substance in the first submission of learned counsel for the petitioner.

As regards second argument, it may be noticed that the shop in possession of the petitioner is in the front and it has not come in evidence that landlord now does not wish to come back. Rather the landlord himself came from Germany and appeared in evidence and deposed in the Court. He specifically stated that he wish to come back and settle in the country of his origin.

Keeping in view the aforesaid facts merely because the construction on the remaining premises has already been raised cannot be a ground to hold that the bona fide personal necessity of the petitioner has come to an end particularly when the shop in question is abutting the main road. It is not the case of the tenant that the present shop in question cannot be appropriately merged/integrated in the construction of already constructed building. Still further, the landlord cannot be expected to keep waiting till the tenant vacates the tenanted premises. Landlord in the present

case has gone ahead with partial construction of the remaining premises, leaving scope for raising construction on the tenanted premises, so as to merge/integrate the same into one. Such step of the landlord cannot be viewed with suspicion. It may be noted that eviction proceedings have remained pending in the Court for almost 8 years.

In view thereof, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No