

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

(1) Civil Revision No.7737 of 2019 (O&M)

Arvinder Pal Singh

.....Petitioner

Versus

Roop Rani and others

.....Respondents

(2) Civil Revision No.676 of 2020 (O&M)

Harbans Singh

.....Petitioner

Versus

Roop Rani and others

.....Respondents

(3) Civil Revision No.620 of 2020 (O&M)

Rajinder Singh

.....Petitioner

Versus

Roop Rani and others

.....Respondents

(4) Civil Revision No.623 of 2020 (O&M)

Ashwani Kumar

.....Petitioner

Versus

Roop Rani and others

.....Respondents

(5) Civil Revision No.627 of 2020 (O&M)

Kammo Rani

.....Petitioner

Versus

Roop Rani and others

.....Respondents

(6) Civil Revision No.720 of 2020 (O&M)

Santokh Sidhu

.....Petitioner

Versus

Roop Rani and others

.....Respondents

(7) Civil Revision No.518 of 2020 (O&M)

Charan Singh

.....Petitioner

Versus

Roop Rani and others

.....Respondents

(8) Civil Revision No.889 of 2020 (O&M)

Kamaljit Singh

.....Petitioner

Versus

Roop Rani and others

.....Respondents

Date of Decision: 28.02.2020

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Arun Jain, Senior Advocate assisted by
Mr. Amit Jain, Advocate for the petitioner
(in C.R. No.7737 of 2019).

Mr. Divanshu Jain, Advocate for the petitioner(s)
(in C.R. Nos.518, 620, 623, 627, 676, 720 and 889 of 2020).

Mr. Amit Jhanji, Advocate for the respondents.

MAHABIR SINGH SINDHU, J.

This order shall dispose off afore-mentioned eight revisions filed under sub-section 5, Section 15 of the East Punjab Urban Rent Restriction Act, 1949 (*for short 'the Act'*) against the impugned judgment dated 11.10.2019, passed by learned Appellate Authority, Jalandhar, whereby the appeal(s) of the petitioner(s)/tenant(s) were dismissed and the eviction order(s) dated 28.01.2019 of the learned Rent Controller were affirmed.

2) Respondents (landlords) filed ten petitions against the present petitioner(s) (tenants) as well as two others for their eviction from total ten shops, situated in Gurjeet Nagar, Garha Road, Jalandhar, fully described in red colour of Site Plan, and boundaries of which were described in respective petitions. All the petitioner(s) were inducted as tenant(s) between 03.06.1993 to 03.06.2013. On the date of filing of the eviction petition(s), rate of rent in all the cases are acknowledged to be in the range of ₹ 900/- to ₹ 1976/- per month.

Also noteworthy that qua two shops i.e. Nos.6 and 10, there is no challenge by the respective tenants.

3) For convenience and with the consent of both sides, the facts have been noticed from Civil Revision No.7737 of 2019, which, in brief, are as under:-

The petitioner was inducted as a tenant in Shop No.9 at a monthly rent of ₹ 1800/- with increase of 2% after every three years on the basis of a rent note dated 22.02.2006, executed with earlier owners/landlords, namely, Vidya and Reena. Tenancy is stated to be from month to month basis. On the date of filing of the petition, the rate of rent has been increased to ₹ 1872/- per month. Undisputedly, respondents purchased the entire complex comprising ten shops (total area measuring 6 Marla – 183 sq. ft.) from the earlier owners i.e. Vidya and Reena on the basis of registered Sale Deed No.4537 dated 05.09.2013, thus, within the definition of Section 2 (c) of the Act, respondents became the landlords of the petitioner w.e.f. 05.09.2013. Relationship of the parties i.e. landlord and tenant is no longer in dispute.

It is claimed in the eviction petition that respondents belong to a family of goldsmith/jewellers from common ancestor, namely, Shri Harbans Lal s/o Shri Nathu Mal and their pedigree table is shown in para 2 of the petition. Grounds of eviction were projected by the respondents on two counts:-

- (1) non-payment of rent w.e.f. 05.09.2013 along with property/house tax;*
- (2) for own use and occupation of the premises by the respondents/landlords.*

Claims of the respondents/landlords were denied by the petitioner/tenant while filing written statement and on the basis of pleadings, the following issues were framed by learned Rent Controller:-

- 1). Whether the respondent is liable to be ejected from the shop bearing No.9, situated in Gurjeet Nagar, Garha Road, Jalandhar for failure to pay arrears of rent of the demised premises since 05.09.2013? OPP*

- 2). *Whether shop in dispute is bona fidely required by the petitioner for his own use and occupation? OPP*
- 3). *Whether the applicants have not come to the court with clean hands? OPR*
- 4). *Whether the site plan attached with the petition is wrong and incorrect? OPR*
- 5). *Relief.*

To prove the averments made in the eviction petition, respondents/landlords examined Anil Kumar as PW-1 on 06.04.2016, but after tendering his affidavit Ex.PW1/A along with documents Ex.P-1 to Ex.P-8 and Mark A to Mark C, he did not turn up to face the cross-examination. Thereafter, respondent No.5-Sonia was examined as PW-2, who tendered her affidavit Ex.PW2/A along with Power of Attorney on behalf of the other respondents/landlords as Ex.PZ as well as Ex.P-2 to Ex.P-8.

Per contra, petitioner/tenant examined following eight witnesses:-

<i>RW-1</i>	<i>Jaswant Singh</i>
<i>RW-2</i>	<i>HC Sohan Lal</i>
<i>RW-3</i>	<i>Sangeeta, Civil Ahlmad</i>
<i>RW-4</i>	<i>Bhagat Singh</i>
<i>RW-5</i>	<i>Arvinderpal Singh</i>
<i>RW-6</i>	<i>Harwinder Singh</i>
<i>RW-7</i>	<i>Baljinder Kumar</i>
<i>RW-8</i>	<i>Vikas Dua, Head Draftsman, MC, Jalandhar</i>

Documentary evidence by way of Ex.R-1 to Ex.R-8 (Sale Deeds) were also produced by the petitioner/tenant.

4) After hearing both sides and taking into consideration the material available on record, learned Rent Controller found that petitioner/tenant was not in arrears of rent, thus, decided Issue No.1 in his favour, but

answered Issue No.2 in favour of the respondents/landlords regarding *bona fide* requirement of the premises in dispute for their own use and occupation. Consequently, learned Rent Controller allowed the petition vide order dated 28.01.2019 and directed the petitioner to hand over the vacant possession of the shop in dispute to the respondent(s) within three months from the passing of the order.

5) Aggrieved against the above eviction order, an appeal was preferred by the petitioner/tenant, but the same was dismissed by learned Appellate Authority, vide impugned judgment dated 11.10.2019. Hence, the present revision petition(s).

6) It is contended on behalf of the petitioner(s)/tenant(s):-

- (i) *that impugned orders, passed by both the Courts below, are suffering from grave illegality and impropriety as there is no sufficient material on record to prove the bona fide requirement of the respondents/landlords for the premises in dispute;*
- (ii) *that respondents are dealing in the sale and purchase of disputed properties, present ten shops were purchased from the earlier landlords on cheaper rates, where petitioner(s) were continuing as tenant(s) since long, thus, the eviction petitions have been filed not only with mala fide intention, but are based on totally frivolous and non-existent ground;*
- (iii) *that respondents have projected their whole case of bona fide requirement on the expertise of Anil Kumar, who although initially appeared as PW-1, but did not turn up to face the cross-examination, thus, the ground of personal necessity is not proved;*
- (iv) *that all the respondents are female members from different families, having no experience for running jewellery business, therefore, the entire story of starting a retail outlet showroom is only wishful thinking just to throw away the petitioner(s) from*

the premises in dispute;

- (v) that as per the testimony of RW-8, Vikas Dua, Head Draftsman, M.C., Jalandhar, construction of a retail outlet showroom is not permissible as the same is situated only on 44' wide road, but as per the parameter, laid down under Bye-laws of the Corporation, the width of the road should be at least 18 meters i.e. 60' (approximately);*
- (vi) that in view of the provisions of sub-para (iii) of Section 13 (3) (a) of the Act, a building cannot be demolished by the landlord till it is proved unsafe or unfit for human habitation;*
- (vii) that in view of the definition of 'building' under Section 2(a) of the Act, every single shop is a 'building', therefore, in terms of second proviso under sub-para (iv) of Section 13 (3) (a), respondents could file only one eviction petition against a tenant, but not ten different petitions against all ten petitioners/tenants being of same class.*

On the other hand, learned Counsel for the respondents submitted:-

- (i) that bona fide requirement of the respondents/landlords is duly established and thus, there is no illegality or impropriety with the impugned orders passed by both the Courts below;*
- (ii) that documents (Ex.R-1 to Ex.R-8), produced by the petitioner(s)/tenant(s), were duly considered by both the Courts below, but were found to be of no help;*
- (iii) that mere non-appearance of Anil Kumar to face cross-examination is not fatal as PW-2 has fully proved the bona fide requirement of the respondents/landlords and the eviction petitions were filed not only for the benefit of Anil Kumar, but on behalf of all the respondents as is clear from the testimony of PW-2 coupled with the Power of Attorney (Ex.PZ), executed by other respondents/landlords in her favour;*
- (iv) that Anil Kumar was having the expertise in the jewellery business, therefore, his assistance was pleaded in the eviction petition being helpful for smooth running of the business by all the respondents/landlords and it is duly proved that all the*

families are in jewellery business since long;

- (v) that RW-8 is merely a Draftsman of the Corporation and not the competent authority for sanctioning any building plan. He was neither directed by learned Rent Controller for spot inspection of the premises in dispute; nor asked to prepare any report in the matter, rather just to help the petitioner(s)/tenant(s), he at his own visited the place and submitted the report which is otherwise not helpful in any manner. The premises in dispute is a commercial building duly approved by the competent authority on 04.02.1993/03.03.1993 and approved building plan is already on record;*
- (vi) that eviction petitions were filed on the basis of bona fide requirement of the respondents/landlords and not under sub-para (iii) of Section 13(3)(a) on account of the building having become unsafe or unfit for human habitation;*
- (vii) that second proviso to sub-para (iv) of Section 13(3) (a) of the Act is applicable only where landlord had obtained possession of a building of the same class, but in the present case, there is no evidence on record to prove that respondents/landlords ever obtained the possession of any other building of same class under the Act;*
- (viii) lastly submitted that in view of the well settled law, this Court should not interfere with the findings of facts, recorded by both the Courts below, on the point of bona fide requirement of the respondents/landlords while exercising powers under sub-section 5, Section 15 of the Act until and unless the findings are found to be based on no evidence or perverse.*

- 7) Heard learned Counsel for the parties and perused the record.
- 8) The point for consideration in the present cases is as to whether the impugned orders, passed by both the Courts below, are suffering from any illegality or impropriety? If yes, whether the same is liable to be interfered by this Court while exercising revisional jurisdiction under sub-section 5, Section

15 of the Act or not?

9) It is noteworthy that prior to 1956, under sub-para (ii) of Section 13 (3)(a) of the Act, a landlord could seek the eviction of the tenant from a non-residential building for his *bona fide* requirement and the unamended provisions of the same are extracted here-as-under:-

“(ii) in case of a non-residential building or rented land, if
(a) he requires it for his own use:
(b) he is not occupying in the Urban Area concerned for the purpose of his business any other such building or rented land as the case may be ; and
(c) has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the Urban Area concerned.”

The above right of the landlord for seeking eviction from non-residential building was taken away in the year 1956 by way of an amendment i.e. East Punjab Urban Rent Restriction (Amendment) Act, 1956 (Punjab Act No.29 of 1956) (*for short 'Amendment'*) and the words '*a non-residential building or*' were deleted from sub-para (ii) apart from the omission of the words '*building or*' from sub-paras (b & c), respectively. However, the amendment was found to be unconstitutional and the same was struck down by the Hon'ble Supreme Court in '**Harbilas Rai Bansal Versus State of Punjab and others, 1996 (1) SCC 1**. Paras 3, 4, 5, 17 and 18 of the above judgment being relevant are extracted as under:-

“ 3. The relevant provisions of the Act prior to the amendment were as under:

“13. Eviction of Tenants.-

(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession:-

* * *

(ii) in case of a non-residential building or rented land, if -

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be; and

(c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the urban area concerned.”

4. The amendment was enforced by the notification dated 24-9-1956. The impugned provisions of the amendment are as under:

“ 1. Short title.- This Act may be called the East Punjab Urban Rent Restriction (Amendment) Act, 1956.

2. Amendment of Section 13 of East Punjab Act III of 1949.- In clause (a) of sub-section (3) of Section 13 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as the principal Act-

(i) (a) * * *
(b) * * *

(ii) (a) In sub-clause (ii), the words 'a non-residential building or' shall be omitted.

(b) In sub-paragraph (b), the words 'building or' and the words 'as the case may be' shall be omitted.

(c) In sub-paragraph (c), the words 'a building or' shall be omitted.

(iii) * * *

(iv) In sub-clause (iv), for the words 'any building', where they first occur, the words 'any residential building' shall be substituted.

(v) In the second proviso, for the words 'a residential, a scheduled or non-residential building or rented land', the words 'a residential building or rented land' shall be substituted.”

5. After the enforcement of the amendment the provisions of the Act are as under:

“(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

* * *

(ii) in case of (***) rented land, if -

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such 2 (***) rented land 3(***); and

(c) he has not vacated such 4 (***) rented land without sufficient cause after the commencement of this Act, in the urban area concerned.”

17. In Gian Devi case the question for consideration before the Constitution Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The above-quoted observations were made by the Bench keeping in view that hardship being caused to the landlords of commercial premises who cannot evict their tenants even on the ground of bona fide requirement for personal use. The observations of the Constitution Bench that "bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial" fully support the view we have taken that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of Article 14 of the Constitution of India and are liable to be struck down.

18. We allow the appeal, set aside the impugned judgment of the High Court, declare the above said provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act which were operating before coming into force of the amendment. The net result is that a landlord - under the Act - can seek eviction of a tenant from a non-residential

building on the ground that he requires it for his own use. ”

Concededly, present eviction petitions were filed regarding the non-residential building i.e. ten shops by the respondents/landlords.

If we go by the true construction, even as on today, in view of the judgment of the Hon'ble Supreme Court in **Harbilas Rai Bansal's case (supra)**, sub-para (ii) of Section 13(3)(a) of the Act deals with eviction of a tenant from a non-residential building; instead of sub-para (i) thereof, which talks about the eviction of a tenant from residential building.

10) As per averments, made in the eviction petition, respondents/landlords purchased the property for their own use and occupation while taking into consideration the surrounding circumstances. It is also averred that respondents/landlords originally belong to family of goldsmith and jewellers, who are dealing in various kinds of ornaments and detailed need as reflected in sub-para (b) of para 4 reads as under:-

“ That the demised premises is required for the use and occupation by the petitioners. As stated above, the petitioners belong to the family of jewellers and at present the family is running various firms in the city of Jalandhar, namely M/s Golden Jewellers at Garha Road. The said shop is on rent and is being run by Anil Kumar husband of petitioner No.4. The said shop is situated at distance of only 20 meters from the demised premises. The landlord of the said shop has already obtained ejectment orders against Anil Kumar and the proceedings regarding the same are pending before Hon'ble Punjab and Haryana High Court at Chandigarh and the said fact has destabilized the entire business of Anil Kumar. Thus, Anil Kumar does not have any property of his own to operate his business and his dependent on petitioner No.4 for the said purpose. Anil Kumar has large experience in this field and would join the petitioners in the business. Another firm namely M/s Paras Bhardwaj

Jewellers is being run from a distance about 100 ft. from the demised premises. The said shop is being run by Anil Kumar but it is measuring only 65 sq. ft. in area owned by petitioner No.4 and is very small in size face of 65 sq. ft. Another firm by the name of Prince Jewellers is being run on rent by husband of petitioner No.1 Mangat Ram, at Rama Mandi, Jalandhar. Another firm by the name of M/s Babar Jewellers is being run at Bansanwala Bazar, Jalandhar on rent by Sita Ram husband of petitioner No.3. Thus the family has sufficient know how of this trade. The entire premises are required by the petitioners and the petitioners are filing the simultaneous ejectment petitions for their bona fide need and occupation, against all the tenants.

The petitioners intend to demolish the existing structure and reconstruct the same, so that retail outlet showroom could be built up in the entire area of 6 Marla-183 sq. ft. The demised premises shown in the site plan is commercially viable and even otherwise in order to meet the demands of the modern day consumer, the petitioners intend to provide all types of ornaments like diamond, gold etc. under one roof and also provide all type of services like polishing, dyeing, designing (Chidrai), melting, dye cutting etc. Even the other contemporaries in the same business has developed modern day retail outlets and in order to avoid lagging behind in this ancestral business, the property in dispute is required urgently. The location is most suitable and many villages are also at an easy approach from the demised premises and the petitioners themselves would engage in the business of the proposed showroom and would be assisted by Anil Kumar who is himself facing ejectment being a tenant. The petitioner being woman also tends to start their business and contribute towards their family.”

Still further in para 5 of the petition, it was declared that the respondents/landlords have not vacated any other premises without any sufficient cause since the commencement of this Act and they do not have any other commercial property available with them for fulfilling their need. Also

disclosed that there is only one commercial property owned by respondent No.4-Monika (petitioner No.4 therein) and the same is measuring only 65 sq. ft.

11) In order to prove the case of the respondents/landlords, initially, Anil Kumar appeared as PW-1, but after tendering his affidavit (Ex.PW1/A) along with documents Ex.P-1 to Ex.P-8 as well as Mark A to Mark C, he did not turn up to face the cross-examination, thus, his testimony is of no relevance. The only witness to support the eviction petition is respondent No.5-Sonia, who was examined as PW-2, but fully proved the *bona fide* requirement. Consequently, learned Rent Controller, after taking into consideration the testimony of PW-2 along with other material available on record, decided Issue No.1 i.e. qua arrears of rent against the respondents/landlords, but returned the findings on Issue No.2 i.e. *bona fide* requirement in their favour. The observations of learned Rent Controller, made in para 16 of the eviction order, read as under:-

“ In view of these laws, laid down by Hon'ble High Court, presumption arises in favour of petitioners that petitioners need of demised premises is bona fide as petitioners want the demised shop along with remaining shops for making retail outlet showroom to provide all types of ornaments like diamond, gold etc. and to provide all types of services like polishing dyeing, designing, melting etc. in order to meet the demand of modern day consumer. Thereby, the onus automatically shifts upon the respondent to prove that the need of the petitioners is not bona fide and genuine.”

Learned Rent Controller also duly considered the arguments raised on behalf of the petitioner(s)/tenant(s) in four paragraphs i.e. Para 17, 18, 19 & 20 and ultimately, in para 21, concluded as under:-

“On the basis of discussion held in preceding paras of this judgment, this Court is of the opinion that the petitioners have failed to prove on record that the respondent is in arrears of rent since

05.09.2013. However, petitioners remained successful to prove on record that they require the demised shop along with other shops bona fide for retail outlet showroom to provide all types of ornaments i.e. Diamond and Gold etc. Accordingly, Issue No.1 is decided against petitioners and in favour of respondent whereas, Issue No.2 is decided in favour of petitioners and against respondent.”

Learned Rent Controller further decided Issue Nos.3 and 4 against the present petitioner(s)/tenant(s) and ultimately while considering Issue No.5 regarding relief clause allowed the eviction petition on the ground of *bona fide* requirement of the respondents/landlords directing the petitioner(s) to hand over the vacant possession of the shop(s) in dispute within three months from the date of passing of the order.

12) Learned Appellate Authority after duly considering the arguments of both sides and material available on record, including the testimony of PW-2, RW-8 and documents (Ex.R-1 to Ex.R-8) concurred with the conclusion arrived at by learned Rent Controller on the point of *bona fide* requirement of the respondents/landlords and dismissed the appeal(s).

Learned Appellate Authority in para 15 of the impugned judgment at length considered the point as to whether Anil Kumar is a beneficiary in the eviction petition or not? It came to the conclusion that retail outlet showroom is not only for settling the Anil Kumar, rather it is for requirement of own use and occupation of the respondents/landlords and Anil Kumar is possessing the requisite expertise to assist them in carrying out their business in order to secure a better economic status, thus, he is not the only beneficiary in the eviction petition.

13) Both the Courts below have accepted the *bona fide* requirement of the respondents for running their business and there is sufficient material on record to sustain those findings.

PW-2 has duly proved that there is a requirement of the demised premises by the respondents/landlords for starting retail outlet showroom to provide all types of services like gold, diamond, polishing, dyeing, designing, melting etc. at one common platform in order to meet the demand of modern day customers.

The claim of *bona fide* requirement of the respondents/landlords is opposed by the petitioner(s)/tenant(s) on the basis of documents Ex.R-1 to Ex.R-8 (Sale Deeds) on the ground that they are property dealers and are having sufficient area to run their business. Both the Courts below have duly considered all these documents, but did not find favour for the petitioner(s)/tenant(s) and there is no reason for this Court to differ with the conclusion recorded by the Courts below. No doubt, all these documents i.e. Ex.R-1 to Ex.R-8 being registered Sale Deeds are public documents, but cannot help the petitioner(s)/tenant(s) to demolish the *bona fide* requirement of the respondents/landlords and for the sake of repetition, the gist of all the Sale Deeds are summed up as under:-

Ex.R-1 Residential Plot (13.75 Marlas), situated in Village Puranpur, Tehsil & Distt. Jalandhar, sold on 07.12.2009 by one Kulwant Singh to Gulshan Kumar (son of respondent No.1-Roop Rani);

Ex.R-2 Residential Plot (12.25 Marlas), situated in Village Puranpur, Tehsil & Distt. Jalandhar, sold on 07.12.2009 by one Kulwant Singh to Gulshan Kumar (son of respondent No.1-Roop Rani);

Ex.R-3 *Agricultural land (5 Kanal 6 Marlas), situated in Village Puranpur, Tehsil & Distt. Jalandhar, sold on 21.11.2011 by one Jasvir Singh to Paramjit Kaur and Madhu wife of Gulshan Kumar (son of respondent No.1);*

Ex.R-4 *Commercial property (1.75 Marla), situated in Village Jandu Singha, Jalandhar, sold on 05.09.2013 by Mangat Ram (husband of respondent No.1) to Reena;*

Ex.R-5 *Commercial property (1.25 Marla), situated in Village Garha Wahinda, Jalandhar, sold on 05.09.2013 by Anil Kumar (husband of respondent No.4) to Reena;*

Ex.R-6 *Residential House (9.5 Marlas), situated in Gurjit Nagar, Jalandhar, sold on 22.07.2013 by Vidya & Reena to Sunil Kumar (husband of respondent No.5-Sonia);*

Ex.R-7 *Agricultural land (2 Kanal 0 Marla), situated in Village Puranpur, Jalandhar, sold on 24.10.2008 by Lakhwinder Singh to Madhu wife of Gulshan Kumar (son of respondent No.1);*

Ex.R-8 *Commercial Shop (165 sq. ft.), situated in Garha Wahinda, Jalandhar, sold on 30.06.2014 by Anil Kumar (husband of respondent No.4) to Reena.*

The above conclusion of all the aforesaid documents clearly reveals that Ex.R-1, Ex.R-2, Ex.R-6 are residential properties; Ex.R-3 and Ex.R-7 are agricultural land; Ex.R-4 and Ex.R-5 are commercial properties, but situated in rural area, whereas Ex.R-8 is a commercial shop, situated in Garha Wahinda, Jalandhar, measuring only 165 sq. ft., which was sold by Anil Kumar to one Reena on 30.06.2014 i.e. prior to filing of the ejectment petition. Moreover, this was only a small space, which would not serve the purpose of *bona fide* requirement of the respondents/landlords for running the retail outlet showroom.

Also necessary to mention here that as per the disclosure made by

the respondents/landlords in para 5 of the petition, respondent No.4 is having one shop, measuring 65 sq. ft., but again that is also not sufficient to fulfil their *bona fide* requirement for running a retail outlet showroom. Since the *bona fide* requirement of the respondents/landlords is duly proved, therefore, the contention of the petitioner(s)/tenants that they (respondents/landlords) are property dealers and having sufficient space available in view of Ex.R-1 to Ex.R-8 is liable to be rejected.

Consequently, the argument that eviction petitions were filed with *mala fide* intention being frivolous and on non-existent ground of personal necessity is also liable to be rejected.

As already discussed, PW-2 has successfully proved the factum of *bona fide* requirement of the respondents/landlords and she was cross-examined at length on three occasions i.e. 17.12.2016, 18.07.2017 and 31.08.2017, running into nine pages, but her testimony was not shaken in any manner, thus, mere non cross-examination of Anil Kumar (PW-1) is not fatal to the case of the respondents/landlords. Moreover, as per the case of the respondents/landlords, Anil Kumar was sought to be associated for running the jewellery business on the basis of his expertise and thus, by no stretch of imagination, it could be construed that eviction petition was filed for the benefit of said Anil Kumar only or his non cross-examination would be fatal for the *bona fide* requirement of the respondents/landlords in any manner.

It has also been duly established that all the respondents belong to different families, but they are from a common ancestor, namely, Shri Harbans Lal s/o Shri Nathu Mal and moreover, relationship of the respondents/landlords is duly admitted by the petitioner(s)/tenant(s) in para 2 of their reply also.

Since all the respondents/landlords are related to each other being from common ancestor and running four jewellery shops since long and which are as under:-

- (i) *M/s Golden Jewellers at Garha Road by Anil Kumar, (husband of respondent No.4-Monika), on rent, which is 20 meters away from the demised premises. Ejectment orders have been passed and attained finality up to Hon'ble Supreme Court. Anil Kumar is having long experience in the field of jewellery business and would join the respondents/landlords in their business;*
- (ii) *M/s Paras Bhardwaj Jewellers, situated at a distance of 100 feet from the demised premises, measuring 65 sq. ft., owned by respondent No.4, thus, very small in size;*
- (iii) *M/s Prince Jewellers, run by Mangat Ram (husband of respondent No.1), on rent, situated at Rama Mandi, Jalandhar;*
- (iv) *Babbar Jewellers at Bansa Wala Bazar, Jalandhar, on rent by Sita Ram (husband of respondent No.3).*

All the families of respondents/landlords are having vast experience in jewellery business and thus, requirement of the demised premises for running their business at a common platform is absolutely justified being *bona fide* requirement and there is nothing wrong to start a retail outlet showroom at one common platform by joining hands with each other.

14) The testimony of RW-8 is also not helpful to the petitioner(s) in any manner as he is merely a Draftsman and not the competent authority for sanctioning of any building plan of commercial property. Even otherwise, this witness has acknowledged during cross-examination that as per Master Plan, the premises which is of a commercial nature shall continue to be used for the same

purpose. Moreover, it is duly admitted by the petitioner(s)/tenant(s) also that shops can be constructed in place of the demised premises as well as that respondents could satisfy their need by constructing shops/building as per bye-laws of the Corporation.

Undisputedly, the premises in dispute which is commercial in nature was constructed by the earlier owners after getting due permission from the competent authority and sanctioned building plan dated 04.02.1993/03.03.1993 is already on record of learned Rent Controller at Page No.307 (Ex.P2).

The above sanctioned plan (Ex.P2) was duly considered by both the Courts below and came to the conclusion that as per the parameters laid down by the Corporation, there is sufficient parking area existing in front of the premises in dispute for parking of the vehicles. Therefore, the argument of petitioner(s)/tenant(s) that there is no sufficient parking area for running the retail outlet showroom is also liable to be rejected.

15) The contention of the petitioner(s)/tenant(s) that in view of sub-para (iii) of Section 13 (3) (a) of the Act, the demolition of the building would not be permissible until and unless the same is declared as unsafe or unfit for human habitation is also liable to be rejected for the simple reason that present eviction petitions were filed on the ground of personal necessity due to *bona fide* requirement of the respondents/landlords under sub-para (ii) of Section 13(3)(a) and not on the ground that building has become unsafe or unfit for human habitation. Moreover, learned Rent Controller has not passed any order for demolition of the premises in question and even the learned Appellate Authority also in para 24 of the impugned judgment observed as under:-

“The landlord/petitioners can make certain constructional changes in the demised building in order to facilitate their business and for this, neither the Rent Controller; nor this Appellate Authority are vested with any jurisdiction to pass any kind of directions”.

16) The plea of the petitioner(s) that respondents/landlords are debarred from filing the ten petitions under second proviso of sub-para (iv) of Section 13 (3) (a) is also not acceptable as under that proviso, *where the landlord has obtained possession of a building under the provisions of sub-paragraph (i) or (ii) of Section 13(3)(a) shall not be entitled to apply again under the said sub-paragraphs for the possession of any other building of the same class or rented land*, but in the present case, there is no evidence to prove that respondents/landlords have ever obtained the possession of any other non-residential building from any other tenant(s), therefore, this plea is also liable to be rejected.

17) Above all, under sub-section 4 of Section 13 of the Act, where a landlord, who has obtained possession of the building in pursuance of an order under sub-paragraph (i) or (ii) of Section 13 (3)(a), does not himself occupy it for a continuous period of 12 months from the date of obtaining the possession, the tenant who has been evicted may apply to the Rent Controller for an order directing that he shall be restored to possession of such building and the Controller shall make an order accordingly. Therefore, in case there is a failure on the part of the respondents/landlords to occupy the building for a continuous period of 12 months from the date of obtaining possession, the petitioner(s)/tenant(s) would have remedy before learned Rent Controller for restoration of their possession.

18) Lastly, this is not the case of the petitioner(s) that there is no evidence at all to prove the *bona fide* requirement of the respondents or that any irrelevant material has been considered by both the Courts below while recording the finding to that effect or the same are perverse in any manner. Therefore, the interference by this Court while exercising jurisdiction under sub-section 5 of Section 15 of the Act would not be justified in view of the law laid down by the Hon'ble Supreme Court. Reference in this regard can be made to the Constitution Bench judgment in a case '**Hindustan Petroleum Corporation Ltd. Versus Dilbahar Singh**', 2014 (9) SCC 78, while dealing with the jurisdiction of revisional Court to interfere with the findings of fact recorded by Appellate Authority. The Hon'ble Supreme Court in para 45 held as under:-

“ 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 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 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. ”

Still further, Hon'ble Supreme Court in a recent case titled as '**M/s Kaithal Provision Store Versus Sanjay Bansal & Anr.**', decided on **26.07.2018**, reminded the revisional Courts in the following terms:-

“This Court has repeatedly held that in exercise of the revisional jurisdiction, unless a finding is perverse, there can be no interference in revision. See - for the revisional jurisdiction of the East Punjab Urban Rent Restriction Act, 1949, which is the Act applicable in the present case - Ajit Singh and Another vs. Jit Ram and Another, (2008) 9 SCC 699 (para 25).”

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that respondents/landlords have successfully proved their *bona fide* requirement regarding the demised premises. The findings, recorded by both the Courts below, to that effect are well founded. This Court does not find any illegality or impropriety with the impugned order(s), passed by both the Courts below and the same do not require any interference while exercising jurisdiction under sub-section 5 of Section 15 of the Act. Consequently, this Court is left with no option except to dismiss all the above eight revision petitions.

Ordered accordingly.

No other point was argued by either side.

Petitioner(s)/tenant(s) shall hand over the vacant possession of
respective shops to the respondent(s)/landlord(s) on or before 31.05.2020.

February 28, 2020
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>