

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.6987 of 2018(O&M)
Date of decision:03.12.2021

Bharat Bhushan

...Petitioner

Versus

Kuldeep Kaur (deceased) through her LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Ashok Aggarwal, Sr. Advocate, with
Mr. Paras Money Goyal and
Mr. Shrenik Jain, Advocate
for the petitioner.**

**Mr. Shailender Sharma, Advocate
for the respondents.**

ANIL KSHETARPAL, J.

The petitioner herein is a tenant, who has been ordered to be evicted by the Rent Controller as well as by the Appellate Authority in a petition, filed by the landlords, under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act') from the premises describable as House No.80, Sector 19A, Chandigarh, except the servant quarter and the bathroom on the ground of bonafide necessity of the landlords. It may be noted here that an application under Section 13 of the 1949 Act was filed before the Rent Controller, in the year 2012.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book and the records of the courts below which was requisitioned.

The learned senior counsel representing the petitioner has contended as under:-

- (1) The respondents-landlords are not entitled to file an application as they are no more the owners of the property.
- (2) Smt. Kuldeep Kaur or Smt. Aruna Singh did not depose in support of the petition while entering into the witness box and therefore, the court should draw adverse inference.
- (3) The petitioner's application for permission to lead additional evidence has not been decided.
- (4) The landlords are living in Jalandhar and they have no reason to shift to Chandigarh.
- (5) The landlords in fact want to increase the rent as they wrote letter on 21.07.2004, calling upon the petitioner to increase the rent.

Per contra, the learned counsel representing the respondents contends that the resumption of the building by the Chandigarh Administration is not final. He further submits that the Administration has not taken any steps to dispossess either the respondents or their agent therefore, the respondents are entitled to maintain the application before the authorities. He further submits that the petitioner does not dispute the landlord-tenant relationship therefore, he is debarred in all respect from questioning the maintainability of the petition. He further contends that respondent no.3 while appearing as PW1 has proved their case filed by them

in the capacity of landlords. He further submits that before the Appellate Authority, the learned counsel representing the petitioner did not press the application for getting permission to lead additional evidence therefore, no order has been passed by the Appellate Authority in the said application. He further submits that the respondents have specifically pleaded that late Smt. Kuldeep Kaur wanted to shift to Chandigarh, along with respondent no.3 being her son and his family to avail better medical facilities and education to his son. He has further submitted that the respondents have, in the meantime, continued to occupy servant quarter and bathroom.

Let's analyze the first argument of the learned senior counsel representing the petitioner.

The petitioner for the first time objected to the maintainability of the petition before the Appellate Authority on the ground that the property has been resumed by the Chandigarh Administration. Before the Appellate Authority, the petitioner has examined Sh. Mangal Singh, Senior Assistant, Estate Office, Union Territory Chandigarh. He has stated that the complete record of the resumption, is maintained by the office of S.D.O. Building Branch, UT, Chandigarh. He has also stated that as per the official record available with him, Smt. Daulati (predecessor-in-interest of the respondents) is the absolute owner of the said house. The petitioner did not summon the record from the office of SDO, Building Branch, UT, Chandigarh. Moreover, it is evident that in 1970, the building/plot was resumed, as the owner failed to construct the building/plot within a period of 5 years from the date of allotment. From Ex.R/3 (letter dated 22.12.2015), it is evident that the building was restored, subject to completion of house by 31.12.1975. It is not in dispute that the building has been constructed.

Furthermore, it has been stated that as per the report of the official website, the property stands resumed. It may be noted here that the petitioner was required to prove that the building has finally been resumed. However, as already noticed, the petitioner has failed to lead sufficient evidence.

Moreover, this matter can be examined from another perspective. The phrase 'landlord' has been defined in Section 2(c) of the 1949 Act, which is extracted as under:-

2. Definitions-

(a) XX XX XX

(b) XX XX XX

(c) **"Landlord"** means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and every person, from time to time, deriving title under a landlord"

On careful reading of the aforesaid provision, it is evident that the landlord is not necessarily required to be owner of the premises. In the present case, it is not in dispute that the petitioner was inducted as a tenant by Smt. Daulati (predecessor-in-interest of the respondents). The learned senior counsel representing the petitioner, has specifically stated that the petitioner does not dispute the relationship of landlord and tenant between the respondents and the petitioner, respectively.

The learned senior counsel has contended that the landlords had lost their ownership, consequently, they are not entitled to

maintain the petition. He relies upon the judgment passed by the Hon'ble Supreme Court in **Dr. Ambica Prasad vs. Mohd. Alam and another, (2015) 13 SCC 13.** He has also referred to various other judgments but has admitted that the issue sought to be raised, is not the issue that has not been dealt with, in any of the other judgments.

It is evident from the careful reading of the judgment in **Dr. Ambica Prasad (supra)** that the appeal filed by the landlord was allowed by the Supreme Court. In that case, the Supreme Court in a single sentence has stated that the landlord is required to show that he is an owner of the building. The judgment passed by the Supreme Court is not to be read in the manner, as suggested by the learned senior counsel. It is well settled that, before it is held that the particular judgment lays down a ratio decidendi, it is required to be established that a particular issue has not only been debated but also examined and thereafter decided elaborately. In the aforesaid case, the court was examining the provisions of Bihar Building (Lease, Rent and Eviction) Control Act, 1947. As already noticed, the Supreme Court held in favour of the landlord, ultimately. The Hon'ble Supreme Court further held that the definition of the landlord is couched in a very detailed manner, according to which not only the owner but also any person receiving the rent, whether on his own account or on behalf of the landlord or for the benefit of the landlords or any other person or as a trustee, guardian, or receiver for any other person, is also the landlord.

From the aforesaid discussion, it is evident that the abovementioned judgment does not lay down that before a landlord succeeds in an eviction petition, he is required to prove that he is owner thereof, as a ratio decidendi. If the argument of the learned counsel is to be accepted, it

will violate the whole intent of the Legislature which has defined the phrase 'landlord' in a detailed manner and which has a wide connocation. Section 2(c) of the 1949 Act, does not provide that only an owner can be landlord. Rather it includes, any person entitled to receive rent, whether on his own account or on behalf of any other person. It includes a trustee, guardian, receiver, executor or administrator and includes a tenant who has sub-let any of the tenanted premises.

In view of the aforesaid discussion, there is no substance in the first argument of the learned senior counsel representing the petitioner.

The next argument of the learned counsel representing the petitioner is with regard to non-appearance of respondent no.1, who has now died. She has appeared through respondent no.3, her son. Respondent no.2 has also appeared through her brother i.e. respondent no.3. The eviction petition was filed by late Smt. Kuldeep Kaur and Smt. Aruna Singh along with Sukhraj Singh. Smt. Aruna Singh has also authorized Sh. Sukhraj Singh, who had appeared as PW1. He has been thoroughly grilled by the learned counsel representing the tenant, by putting searching questions. He has answered all the questions. He has not pleaded ignorance about any important particular fact.

Hence, in the considered opinion of the court, it is not necessary for the court to draw an adverse inference, particularly when sufficient evidence has been led by the respondents. The Rent Controller as well the Appellate Authority have rightly concluded that no adverse inference is required to be drawn against the respondents/landlords and this court affirms the aforesaid view.

The next argument of the learned counsel representing the petitioner, is with reference to an application filed before the Appellate Authority for permission to lead additional evidence. The petitioner wishes to produce a copy of letter, dated 22.12.2015, sent by the Estate Officer, informing him that the building stands resumed. The aforesaid document has already been exhibited as RW2/3. Furthermore, on 20.04.2017, the learned counsel representing the petitioner before the Appellate Authority had made a statement that he will argue the entire matter in one attempt. From the reading of the judgment, it is evident that the learned counsel representing the petitioner, did not press this petition at the time of final arguments. Even otherwise, this court has permitted the learned counsel representing the petitioner, to address arguments on the application for permission to lead additional evidence, which was inadvertently not decided by the Appellate Authority. However, the learned senior counsel failed to address any significant argument on this aspect.

The second last argument of the learned counsel representing the petitioner is with respect to the effect that the respondents are residing in Jalandhar. As already noticed, late Smt. Kuldeep Kaur had asserted that she along with her son's family wanted to shift to Chandigarh in order to avail better medical and educational facilities. It is not in dispute that this is the only property owned by the respondents in the city of Chandigarh. Hence, there is no substance even in the last statement of learned counsel representing the petitioner.

The learned senior counsel has further submitted that the landlords in fact want to increase the rent of the tenanted property. This letter was written on 21.07.2004, whereas the petition under Section 13 of

the 1949, Act was filed in December, 2012. Hence, it will not be appropriate to draw an adverse inference against the landlords on the basis of a letter which was written more than 8 years before the filing of the eviction petition.

Keeping in view the aforesaid discussion, there is no substance in the petition.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

December 03, 2021
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No