

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

**CR No.628 of 2021 (O&M)  
DATE OF DECISION : 9<sup>th</sup> SEPTEMBER, 2021**

**Sukhdev Raj (now deceased) through LRs**

**.... Petitioners**

**Versus**

**Vinod Gupta**

**.... Respondent**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

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**In virtual Court**

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Present : Mr. Sanjay Jain, Advocate for the petitioners.

Mr. S. K. Jindal, Advocate for the respondent.

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**RAJBIR SEHRAWAT, J. (Oral)**

1. The present petition has been filed seeking setting aside of the impugned order/judgment dated 08.02.2021 passed by the Rent Controller, Ambala, whereby the petitioners-tenants were evicted from the demised premises.

2. The facts as mentioned in the judgment passed by the court below are; that the respondent-landlord filed eviction petition against the present petitioners-tenants, claiming therein that he is owner and landlord of the building premises bearing House Tax No.5610, 5610/A to C at ground floor and 5610/1 at first floor situated in the corner of the Nicholson Road, Halwai Bazar, Ambala Cantonment. The said property; comprised in premises bearing No.5610/A and B at ground floor, was rented out to the petitioners long back. The respondent-landlord was in

service of a Government Undertaking, namely, Bharat Sanchar Nigam Limited. However, the respondent-landlord retired on 31.10.2015 on attaining the age of superannuation. He was in need of the entire ground floor of the premises for his personal necessity; because he wanted to start his own business by renovating the entire ground floor of the entire property as showroom and that his only son who was in private job was to join the business of the respondent-landlord. It was further alleged that the petitioners-tenants were requested by the respondent-landlord to vacate the demised premises but to no avail. With these averments, the eviction petition was filed by the respondent-landlord before the Rent Controller, Ambala under Section 13(1-A) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short, the 'Act').

3. The petitioners-tenants intended to contest the petition and, therefore, sought leave to contest from the Rent Controller. The said leave was granted by the Rent Controller. It was asserted by the petitioner-tenant that the respondent-landlord was not entitled to file eviction petition. It was further asserted that the respondent-landlord had already got vacated similar properties, which form part of the same building where the present shop is situated; and that the premises got vacated by the landlord was lying vacant. Therefore, there was no bonafide necessity of the respondent-landlord. Although the relations of the landlord-tenant and the agreed rate of rent was not disputed by the petitioners, however, it was further asserted that the son of the respondent-landlord was quite well placed and he was earning ₹70,000/- per month. Therefore, the entire story put up by the landlord was intended to only get the premises vacated.

4. The respondent-landlord had filed replication controverting the assertions made by the petitioners-tenants.

5. Upon the respective pleadings raised by the parties, the Rent Controller framed the issues. On those issues, the respondent-landlord led the relevant evidence by placing on record the documents showing his superannuation, the documents relating to the earlier evictions; and also some other relevant documents. On the other hand, the father of petitioners-tenants tendered in evidence his affidavit. No other evidence was led.

6. After appreciating the evidence, the Rent Controller ordered the eviction of the petitioners-tenants. Aggrieved against the same, the present revision petition has been preferred by the petitioners-tenants, since there is no provision for filing appeal against the said order.

7. Arguing the case on behalf of the petitioners-tenants the learned counsel for the petitioners has mainly raised two points. His first submission is that the respondent-landlord did not have any bonafide requirement. The respondent-landlord had already got vacated two shops from the other tenants and even those shops were lying vacant. However, the respondent-landlord has filed the third petition against the present petitioners as well. Since the respondent-landlord was already having another space in the same urban area, which was not even being utilized by him, therefore, there was no personal necessity with the respondent-landlord, as required under the Act. The second argument raised by the counsel for the petitioners-tenants is that Section 13(1-A) of the Act makes a provision that the application filed by the specified landlord under Section 13(1-A) shall be dealt with, in accordance with the

procedure laid down in Section 13(3)(a)(i) of the Act. The said provision grants liberty to the landlord to apply for eviction of a tenant only from a residential building. Hence, the eviction petition filed by the respondent-landlord qua non-residential property was not even maintainable under the provisions of the statute. The counsel has relied upon the judgment passed by this court in the case of ***Sudarshan Kumar Bhatia versus Dharam Pal Sharma, 2009(2) RCR (Civil) 214***, to support his argument. Hence, the Rent Controller has committed legal error in entertaining and in allowing the rent petition. Accordingly, it is prayed that the present petition be allowed and the eviction order passed by the Rent Controller be set aside.

8. On the other hand, the counsel for the respondent-landlord has submitted that merely because the landlord has got evicted another portion of the same building, would not be a bar against the landlord to move application under Section 13(1-A) as specified landlord. The landlord has one time option to get either entire property or part thereof to be vacated under Section 13(1-A) of the Act. The counsel has relied upon the judgment of the Supreme Court as rendered in ***Civil Appeal No.607-608 of 1993*** decided on 14.11.1995 titled as ***Zenobia Bhanot Vs. P.K. Vasudeva and another***, the counsel has further relied upon judgment of the Supreme Court rendered in the case of ***Balwant Singh @ Bant Singh and another Vs. Sudarshan Kumar & another, 2021(1) RCR (Rent), 146***, to buttress his argument that the tenant cannot dictate the terms qua adequacy of the space available with the landlord for the business. It is for the landlord to decide as to how much space would be sufficient for him for his requirements. Relying upon the judgment

rendered in the case of *M/s. Neeli TV and Electronics Vs. Ravinder Sachdeva and another, 2016(5) RCR (Civil) 384*, the counsel for the respondent has submitted that the only requirement under Section 13(1-A) would be that the building must be the same, however, there can be any number of tenants in that building; and in exercise of right under this Section, the landlord can get evicted any number of tenants. On the issue of right qua non-residential building, being available to the landlord under Section 13(1-A) of the Act, the counsel for the respondent-landlord has relied upon the judgment of this court rendered in the case of *Jitender Kumar Vs. R. S. Virk and others, 2014(2) RCR (Rent) 234*, which has further relied upon the judgment of the Supreme Court in the case of *Satyawati Sharma (dead) by LRs Vs. Union of India, 2008(2) RCR Civil, 805 (SC)* and in case of *Harbilas Rai Bansal Vs. The State of Punjab, 1996(1) RLR 1 (SC)*, and wherein it has been held that the right available under Section 13(1-A) is available to the landlord qua residential, as well as, non-residential buildings. Accordingly, it is submitted by the counsel that the respondent-landlord has duly substantiated the case. Therefore, the Rent Controller has rightly allowed the application and ordered the eviction of the petitioners-tenants. Hence, it is prayed that the present petition be dismissed.

9. Before proceeding further, it deserves to be noted that the order passed by the Rent Controller under Section 13(1-A), has been made non-appealable by the statute. Although, by way of proviso, the High Court has been conferred the revisional power over the order of the Rent Controller, however, that power is restricted to only seeing that the order passed by the Rent Controller is in accordance with law. Hence,

this Court has to restrain itself while adjudicating upon the order passed by the Rent Controller. The facts involved in the case cannot be re-appreciated, except to the extent the same are directly relevant qua the legal proposition involved in the case.

10. Having considered the arguments of the counsel for the parties and having perused the case file, this court finds that the landlord-tenant relationship in the matter has not been disputed even by the tenants. The factum that respondent-landlord retired from the service, which made him the specified landlord, under the provisions of Section 13(1-A) of the Act, has also not been disputed. The factum that the respondent-landlord is the owner of the seven shops comprised in the same building where the shop involved in the present petition is situated, and also the fact that two shops out of those seven have already been got vacated by the respondent-landlord from the other tenants, is also not disputed. The other aspect which cannot be disputed in revision before the High Court is qua the finding of fact qua the necessity put up by the landlord qua his needs. Therefore, this court would be required to consider the case only qua two above said propositions, firstly, as to whether the respondent-landlord is entitled to file the petition for eviction under Section 13(1-A) of the Act, even qua the non-residential building and secondly, whether the availability of other shops with the respondent-landlord itself would be sufficient to deny the specified landlord the right to file application under Section 13(1-A) of the Act.

11. On the point whether the respondent-landlord is entitled to file the petition qua non-residential building as well, this court finds that the Rent Controller has rightly recorded the finding that in the present

case, the tenancy was created only for commercial purpose and the necessity now pleaded by the respondent-landlord is also for the commercial purpose. Hence, the eviction is not being sought for cross purposes; rather, it is for the same purpose for which it was lent out to the petitioners. So far as the maintainability of the eviction petition qua non-residential building under the provisions of Section 13(3)(a)(i), is concerned, this is no more *res integra*. This court finds that the reliance of the counsel for the respondent-landlord on the decision rendered by this Court in ***Jitender Kumar (Supra)***, is well placed. Even the Hon'ble Supreme Court, while dealing with the similar situation, has held that the distinction between the residential and non-residential building for the purpose of Section 13(3)(a)(i) is artificial and arbitrary. Hence, it is by way of abundant judicial precedents that the non-residential purpose has been duly read into the purpose specified under Section 13(3)(a)(i). Hence, this court does not find any substance in this argument raised by the counsel for the petitioners that the respondent-landlord could not have filed petition under Section 13(1-A) of the Act for non-residential purpose.

12. Qua the bonafide necessity of the respondent-landlord, needless to say that necessity of the landlord is not to be dictated by the tenant. This has even been held so by the Supreme Court in the case of ***Balwant Singh (Supra)***. It is for the landlord to visualize his needs and to make a plan qua his necessities and then to put up the same before the Rent Controller. If the said need is not found to be superfluous or exorbitant; as per the standards of an ordinary man of ordinary prudence, even the Rent Controller is not required to hold the same to be non-

bonafide. There is nothing on record even to remotely suggest that the need, put up by the respondent-landlord, is superfluous or exorbitant. On the contrary, the Rent Controller has rightly recorded that the necessity of the respondent-landlord is bonafide and he requires the premises for his necessity; so as to extend the business assimilating his son as well in the same. Qua the other space being available to the respondent-landlord in the same building premises, it deserves to be noted that those two shops also, from where the respondent-landlord has got evicted the other tenants, forms part of the same building from which the petitioners-tenants are sought to be evicted. Hence, the necessity of the respondent-landlord, qua the shop involved in the present case, is part of an integrated plan of the landlord to utilize the entire space of the ground floor of the building by converting it into showroom. Therefore, mere fact that the respondent-landlord has got vacated other premises in the same building, would not debar the landlord from seeking eviction of the other tenant as well. This Court finds support in this regard from the judgment rendered by this court in the case of ***Zenobia Bhanot (Supra)***. Accordingly, this court does not find any legal error in the decision arrived at by the Rent Controller.

13. No other point was argued.

14. In view of the above, finding no merit in the present petition the same is dismissed.

15. All the pending applications, if any, stand disposed of accordingly.

9<sup>TH</sup> SEPTEMBER, 2021  
'raj'

(RAJBIR SEHRAWAT)  
JUDGE

*Whether speaking/reasoned:*

*Yes*

*No*

*Whether Reportable:*

*Yes*

*No*