

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 997 of 2021 (O&M)

Date of Decision: 26.07.2021

Amit Chand deceased through his LRs

... Petitioner(s)

Versus

Jiwan Kumar and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Arihant Jain, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The tenants have filed the present revision petition assailing the correctness of the order passed by the learned Appellate Authority on 22.01.2021. The learned Appellate Authority has ordered their eviction on the ground of bonafide requirement of respondent No.1-Jiwan Kumar.

2. **FACTS**

2.1 Some facts are required to be noticed. By filing a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the 1949 Act”), respondent No.1 and 2 (landlords) sought eviction of late Sh. Amir Chand from one Shop-cum-Godown bearing municipal No. 473/13, situated in Chaura Bazaar towards Grain Market, Ahmedgarh, Tehsil Malerkotla. The respondents claim ownership on the basis of a registered sale deed dated 25.02.1988 from Sh. Deepak Kumar.

The landlords have pleaded that respondent No.1 is not in possession of any other commercial premises and he requires the premises for his bonafide

requirement. The eviction was also sought on the ground that the tenant has not paid the rent for quite some time. Sh. Amir Chand (the tenant) has died. The petitioners herein are his widow and son. They contested the petition on the ground that late Sh. Amir Chand took the premises on rent from Amar Nath son of Bihari Lal. It was submitted that the said Amar Nath had sold the property to the subsequent vendees, however, the respondents have had no notice of the sale deed.

2.2 The learned Rent Controller, on appreciation of evidence, dismissed the petition on the ground that the property in dispute is a part of the residential house and therefore, the eviction cannot be ordered on the ground of necessity of the commercial premises.

2.3 The learned Appellate Authority has reversed the judgment passed by the learned Rent Controller. It has been found that the learned Rent Controller has travelled beyond the pleadings to the effect that the property is a part of the residential house. The learned Appellate Authority has found that the tenants do not dispute that the premises in question was let out for commercial purposes and late Sh. Amir Chand was running a shop from the premises in dispute. After the death of Sh. Amir Chand, Smt. Madhur Malti is now using the premises as a godown because she has purchased a shop nearby to the tenanted premises.

2.4 The learned Appellate Authority has further found that respondent No.1 is, no doubt, the owner of 3/10th share in another shop, however, the same is not in his possession as his wife is in possession of 1/10th share in the aforesaid shop, whereas remaining portion is in possession of respondent No.2.

2.5 Heard learned counsel for the petitioner at length and with his able assistance, this Court has perused the paper-book.

3. **Arguments of the learned counsel**

The learned counsel representing the petitioners has submitted that the rented property is different from the property purchased by the respondents. The property is a part of the residential property and therefore, no eviction order can be passed on the ground of personal necessity for commercial purpose. The petitioners herein are not the tenants of the respondents. The respondents have failed to make out a case for their bonafide requirement as petitioner No.1 is also a co-owner in another shop.

4. **Analysis of the arguments**

4.1. This Bench has carefully considered the arguments of the learned counsel for the petitioners and proceeds to analyse the same.

4.2 With regard to the first argument, it would be noted that the petitioners, while filing the written statement, did not object to the maintainability of the petition on the ground that property purchased by the respondents vide sale deed dated 25.02.1998 is different from the property in dispute. Hence, the learned Rent Controller did not frame any issue. Still further, neither before the Rent Controller nor before the Appellate Authority, the petitioners objected to the petition on the ground that the property purchased by the respondents is different from the property in dispute. Hence, the petitioners cannot be permitted to raise this contention for the first time in the revision petition.

4.3 The next argument of the learned counsel is with regard to the property being a part of the residential property. It would be noted here that

residential as well as commercial property after the judgment passed by the Hon'ble Supreme Court in *Harbilas Rai Bansal v. The State of Punjab and Another AIR 1996 Supreme Court 857*. Still further, the Appellate authority has correctly held that the petitioners, while filing the written statement, did not object to the maintainability of the petition on the ground that the property is a part of the residential property. Still further, the petitioners herein, while filing the written statement, have themselves pleaded that the shop in question was taken on rent from Amar Nath. It is also an admitted fact that late Sh. Amir Chand was running a shop from the premises in dispute. Even now the property in dispute is being used by Smt. Madhur Malti as a godown. Still further, the Appellate Authority has found that in the sale deed dated 25.02.1988, the property in dispute is described as a shop on the ground level along with chabutra. Therefore, there is no substance in the arguments of learned counsel representing the petitioners.

4.4 The next argument of the learned counsel for the petitioners is to the effect that the petitioners were not the tenants of Sh. Deepak Kumar- the previous owner. It would be noted here that the respondents have taken a vague defence. On the one hand, they have pleaded that the property in dispute was taken on rent from Amar Nath, which has now been sold to the subsequent vendees. On the other hand, neither the names of the subsequent vendees have been disclosed nor their particulars have been furnished. Still further, the petitioners themselves tendered the rent pursuant to the provisional assessment of rent by the learned Rent Controller. Still further, the petitioners have not led any evidence to prove that the property in

dispute is owned by someone else. Keeping in view the aforesaid facts, the learned Appellate Authority has arrived at a finding of fact, which is not found to be suffering from any perversity. Hence, there is no substance in the argument.

4.5 The last argument of the learned counsel representing the petitioners is with regard to lack of bonafide requirement of the respondents. It would be noted here that respondent No.1-Jiwan Kumar has appeared in evidence. He has categorically stated that he is not in possession of any other commercial premises in the city. He has been cross-examined at length, however, in spite of searching questions being put to him, he has successfully withstood the cross-examination. The learned counsel representing the tenant has failed to create any doubt about the genuineness of the bonafide requirement of respondent No.1. Still further, the petitioners have failed to produce any evidence to prove that respondent No.1-Jiwan Kumar is in possession of any other commercial premises. No doubt, Jiwan Kumar is a co-owner in another property, however, his share is only to the extent of 3/10th. In such circumstances, the findings of the learned Appellate Authority are not wrong.

4.6 It is well settled that while hearing the revision petition, the scope of interference is limited. Reference in this regard can be placed on the judgment of five Judges Bench in ***Hindustan Petroleum Corporation Limited v. Dilbahar Singh (2014) 9 SCC 78***.

5. Hence, finding no merit, the revision petition is dismissed in *limine*.

6. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

July 26, 2021
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No