
HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6276-2019 (O&M)

Reserved on: 27.08.2021

Date of decision: 02.09.2021

Ramesh Kumar

...Petitioner

Versus

Hari Parkash & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Ajay Jain, Advocates for the petitioner.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J.

In the present revision petition, the petitioner is in revision under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 against the concurrent findings of the Courts of the Rent Controller and Appellate Authority, Rewari dated 16.09.2017 and 26.08.2019. He has been directed to be evicted on the ground of the demised premises being a shop being unfit and unsafe for habitation and on the ground of personal use and occupation by the respondent-landlords.

Counsel for the petitioner has vehemently submitted that the element of bona fide need was missing in as much as the building had been purchased on 30.10.2013 and the rent proceedings had been initiated on 25.01.2014. Similarly, it was submitted that the findings recorded on the issue that the premises were unfit and unsafe, were not correct since during the pendency of the proceedings, the adjoining tenanted shop had been demolished and it had damaged the petitioner's shop and therefore, the

revision petition was liable to be allowed.

A perusal of the paperbook along with the record would go on to show that ejectment of the petitioner was sought in respect of one shop marked in the site-plan (Ex.P-1) attached with the rent petition, which was bounded from 3 sides by the other properties of the landlords. The same was stated to be part and parcel of the property bearing House Tax No.3056-57 EP No.806-807 situated at Mohalla Ramsarover (Taliwara), Rewari. The shop in question was earlier owned by Neelam Kholi who had sold it to Pushpa Devi vide sale deed dated 01.02.2007. The same was purchased by the respondent-landlords on 30.10.2013 and the tenant was intimated of the factum of sale. He was stated to be in arrears of rent from 01.06.2007 @ Rs.480/- per month.

The petition was, thus, filed seeking the shop in question for use and occupation of the two sons, Karamvir and Hemant Kumar of the landlords also. It was pleaded that the shop in question was unfit and unsafe for habitation also. The same was stated to be in a dilapidated condition and there were big cracks in the walls and the roof. There was leakage and seepage of water during rainy season as the mortar used in the construction of roof as well as the walls had also lost its binding strength and was falling like powder and the same was more than 80 years old. It was further alleged that the entire property was constructed simultaneously at one time and had become unfit and unsafe and most of the parts of the property had collapsed. Out of the two sons, one was stated to be Graduate and was undergoing training as Goldsmith with petitioner No.1-landlord and was stated to be residing separately from the petitioners along with his wife and sons. The younger son was also to be settled after completion of his Post-Graduate

Degree and was also interested in jewellery business. The landlords wanted to settle both the sons separately due to their different nature and temperament and therefore, the requirement for 2 shops was alleged.

The said factum was denied by the tenant-petitioner. It was further submitted that no part of the building had fallen down itself and rather the landlords had intentionally damaged some part of the building. The injunction suit had also been filed against them and the shop in dispute was sound and perfect. It was alleged that the petitioners and their sons had many commercial properties and the shop in dispute was not at all required by them.

The Rent Controller had framed the following issues:

“1. Whether the petitioner is entitled for ejectment orders under the provisions of u/s 13 of Haryana Rent Act 1973 in respect of the shop in dispute mentioned in para no.1 of the petition and shown with red colour in the site plan and marked as WXYZ against the respondent? OPP

2. Whether the petitioners have not come with clean hands and concealed material facts from this Court? OPD

3. Whether the petition is not maintainable on the ground of non-joinder of necessary parties? OPD

4. Whether the present petition is not maintainable in the present form? OPD

5. Relief.”

The landlords examined as many as 9 witnesses including PW-9, Nand Kumar Nagpal, Building Expert along with PW-8, Rattan Lal, photographer. In support of his case, the tenant also examined as many as 7 witnesses including the building expert, Satyapal as RW-2 who had also

produced the photographs taken by RW-7, Sunny Sachdeva. The demand of non-payment of rent had been rendered academic on account of the fact that the arrears had been tendered during the pendency of the rent petition on 30.04.2014 itself.

The Rent Controller took into account the observations made by the Building Expert of the landlords, as per his report Ex.PW-9/A and also examined the photographs in question showing the condition of the shop, which also weighed over the report of the petitioner's expert, Satyapal (Ex.RW-2/1). Finding the report of the expert of the landlords more trustworthy, a finding was recorded that the building along with the demised shop was constructed before the partition of the country and the construction made on the first floor of the shop had already been demolished. The factum of the complaint, Ex.RW-1/1 which had been made on 06.08.2015, was also noticed and it was held that the photographs which have been mentioned as the proof of dismantling, had not been brought on record. Keeping in view the fact that the building was made from Nanakshahi bricks, reliance was placed upon various judgments of the Apex Court that the landlord is not to wait till the building falls down.

Similarly, on the ground of bona fide requirement, it was noticed that the landlords were doing business of jewellery in the shop at Katla Bazar and therefore, if they wanted to settle their sons in separate premises, no objection could be taken by the tenants. It was noticed that the tenant was in occupation since 1981 and if the landlords wanted to eject him on account of bona fide requirement and on account of the demolition and reconstruction, no fault could be found in the said plea and it was not self-contradictory and

resultantly, ejectment was ordered.

The Appellate Authority also examined the photographs especially Ex.PW-8/2 to come to the conclusion that the projection of the part of the building had already fallen down and therefore, came to the conclusion that the demised shop as well as the entire building was not safe and fit for human habitation. The qualifications of the building expert of the tenant was also noticed that he was not possessing any degree from Civil Engineering or as an Architect whereas the building expert of the landlords was a Civil Engineer. It was noticed that in the sale deed dated 01.02.2007 (Ex.PC) which was in favour of Pushpa Devi, it was mentioned that the building was in dilapidated condition and therefore, it cannot be said that the landlords had incorporated the said facts in their sale deeds since they purchased the same later on 30.10.2013 from Pushpa Devi. The observations of the building expert would go on to show that the shop was made from Nanakshahi bricks and stone in mud mortar and plastered with lime mortar. The roof was made of wooden battens and planks which had been eaten by white ants.

The photographs from the report have also been examined from the summoned record which would also go on to show that it was not a building which was constructed by steel and the building was in a shabby condition with broken wooden battens. Thus, no fault can be found in the findings that the building was unfit and unsafe more so in view of the fact that this Court is not to act as an Appellate Authority while exercising its revisional powers.

Reliance can be placed upon the judgments of the Apex Court in

Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC

78. The said judgment had been followed in **Boorugu Mahadev & Sons & another Vs. Sirigiri Narasing Rao & others 2016 (3) SCC 343** and **Addiserry Raghavan Vs. Cheruvalath Krishnadasan 2020 (6) SCC 275**.

The relevant portion from Addiserry Raghavan (supra) reads as under:

“7. We have heard learned counsel appearing for the parties. The learned counsel appearing on behalf of the appellant pointed out that under Section 20 of the Kerala Rent Control Act, the High Court, in its revisional jurisdiction, cannot act as if it is a second court of first appeal by setting aside findings of fact by the Appellate Authority on reappreciation of the same. He also argued that there being no perversity on the detailed findings given by the Appellate Authority, the High Court exceeded its revisional jurisdiction in interfering with the same and wrongly substituting the findings of the trial court for those of the Appellate Authority. Learned counsel appearing on behalf of the respondent, however, relied strongly upon the trial court’s judgment and stated that the Appellate Authority perversely dealt with material facts on the record and its judgement was, therefore, correctly set aside within the revisional jurisdiction by the High Court. He relied upon the judgment in Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada, (2003) 2 SCC 320 [“Badrinarayan”], in particular, paragraphs 10 and 13 thereof.”

Thus, once only the legality and propriety of the order is to be seen, it would not be within the domain of this Court to scrutinize the evidence in the manner the Appellate Authority has to do so.

On the issue of bona fide requirement, it is not disputed that landlords has two sons, whom they wanted to settle in the business and therefore, even if the premises had been purchased and the ejection petition had been filed after 3 months from the date of purchase, it cannot be said that the requirement is not bona fide. The landlord has also examined himself as

PW-6 and also examined both his sons, Karamvir and Hemant as PW-2 and PW-4. Nothing has been pointed out regarding anything which has come from their cross-examination that the demand of the premises was not there for setting up the jewellery business shop, especially on account of the fact that the father himself is running a shop at Katla Bazar, Rewari.

If the landlord has taken up the responsibility of setting up both his sons in the premises purchased by him, no fault can be found in the concurrent findings of the Courts below on the same principle of the limitation the revisional Court has in interfering in the findings of the Courts below especially where the landlord who wants the premises for his personal use and occupation of his immediate family. The said view was taken in **D.Sasi Kumar Vs. Soundararajan 2019 (9) SCC 282**. Relevant portion reads as under:

“8. In the instant case what is necessary to be taken note is that the tenant despite being in possession and knowing the ownership of the property and also paying the rent, has sought to urge a contention denying the jural relationship. The said aspect has been taken note by the Rent Controller and taking into consideration the partition deed dated 24.02.1997 and further taking into account the fact that the rent was being paid, has answered the said issue in favour of the landlord. Insofar as the requirement of the premises by the landlord the evidence as tendered has been taken note. In that regard the claim put forth is that the landlord intends to run a garment shop for which the premises is required and he also intends to demolish and reconstruct. It is no doubt true that in an appropriate case when eviction is sought under Section 14(1)(b) of the Act, in proof thereof the approved plan for construction and financial capacity to construct is to be established. However, in the instant facts it is noticed that the eviction sought is not just for demolition and construction but is

also for the bonafide use to set up a garment shop. The landlord, in that direction had also contended that the shop would require alteration and, in that view, he has decided to demolish and reconstruct. When that be the case even if not demolished and reconstructed the requirement of the premises is to run a garment shop even if it be by altering the premises to that extent. In that circumstance the eviction was also sought under Section 10(3)(a)(iii) of the Act, 1960.”

Resultantly, in view of the above discussion, the present revision petition is dismissed.

However, keeping in view the fact that the tenant has been there since 1981 and is doing the business, he is granted time till 31.12.2021 to vacate the premises in dispute.

September 02, 2021
sailsh

(G.S.Sandhawalia)
Judge

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No