

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CR-7873-2018 (O&M)
Date of decision: 02.05.2022

YOGESHWAR PARSHAD

..Petitioner

Versus

SHRI JAINENDRA GURUKUL PANCHKULA

..Respondent

2. CR-5527-2019 (O&M)

YOGESHWAR PARSHAD

..Petitioner

Versus

SHRI JAINENDRA GURUKUL PANCHKULA

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Hemani Sarin, Advocate
for the petitioner (in CR-7873-2018).

Mr. Balbir Kumar Saini, Advocate
for the petitioner (in CR-5527-2019).

Mr. Adarsh Jain, Advocate
for respondent.

ANIL KSHETARPAL, J.

1. While assailing the concurrent findings of fact arrived by the Rent Controller as well as by the Appellate Authority, the tenant has filed the present revision petition. At the outset, it must be noticed that the petitioner has made all the possible attempts to delay the decision of the case. Initially, the eviction petition was filed by the respondent, which is a educational society, claiming that it requires the premises for construction of Bhagwan Mahavir Jain University on 15.06.2001. The eviction was also sought on the ground of non-payment of rent and changes made in the

tenanted premises without permission and written consent of the landlord.

The petitioner did not participate resulting in an ex parte judgment dated 28.01.2006. Thereafter, on an application filed by the petitioner, the ex parte judgment was set aside and the petitioner was permitted to contest. Again, the Rent Controller ordered his eviction on 26.11.2014, which has been affirmed by the Appellate Authority by judgment dated 21.08.2018. The eviction has been ordered by both the Authorities on non-payment of rent as well as the bonafide necessity of the respondent.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the judgments passed by the Courts below as well as the record, which was requisitioned.

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

- i. The original rent receipts have not been produced and therefore, they were wrongly admitted in evidence;
- ii. The Society has failed to prove its ownership as sale deed was not produced;
- iii. No evidence has been produced to prove the relationship of landlord and tenant. No date of starting of the tenancy has been disclosed.
- iv. Proceedings for acquisition of the land cannot be used to give findings with respect to the ownership;
- v. Both the Authorities have failed to discuss the ground of bonafide necessity in proper perspective.

4. Per contra, the learned counsel representing the respondent has contended that Sh. V.K. Jain, while appearing as PW-1, produced the original rent receipts on 05.03.2014. It is specifically recorded by the Court that original of documents Ex.P-2 to Ex.P-4 and Ex.P-8 to Ex.P-10, have been brought and the Court after seeing and examining the same, returned the documents, while permitting the respondent to produce its photocopies on the file of the case. Though, the land at one point of time was acquired, however, subsequently it was released from acquisition as is evident from the statement of the Patwari of the area Jina and document Ex.P-7. He further submits that when the petitioner appeared in evidence, he denied his signatures on the receipt only because this was a photocopy. He further submits that Ex.P-8, is yet another receipt signed by the brother of the petitioner who is a serving as a Sessions Judge in the State of Haryana. He has not been examined, although, he also inherited tenancy from his father.

5. After having heard the learned counsel representing the parties at length, the Court proceeds to analyze the arguments.

6. The first argument addressed by the learned counsel representing the petitioner is factually incorrect. As is evident from the statement of Sh. V.K. Jain, who appeared in evidence on behalf of the Society on 05.03.2014, that he brought the original documents and the Court after examining the same, returned the same. Therefore, it is not appropriate for the learned counsel representing the petitioner to contend that the original of the aforesaid documents were never produced.

7. In order to prove the relationship of the landlord and tenant, the respondent-Society has produced three receipts Ex.8, Ex.P-9 and Ex.P10. Originally, late Sh. Maheshwar Parshad was inducted as tenant. After his death, his widow, the petitioner and his brother Sh. Ramesh Dimri inherited the tenancy. Ex.P-8, is signed by Sh. Ramesh Dimri. He is brother of the petitioner. He never appeared in evidence to prove that his signatures do not exist on Ex.P-8. Ex.P-9, another receipt of payment of rent, is signed by the petitioner. He denied his signatures claiming that it is only a photocopy. The petitioner has not produced any evidence to prove that he never signed the receipts. The petitioner while appearing in evidence has admitted that the entire colony is known as the Gurukul Colony. He further admits that the Society is running two schools. Moreover, the petitioner has not disclosed as to how his father entered into the possession of the house. He has stated that initially there was a cantonment and therefore, his father who was serving in the army entered possession. However, no evidence in support thereof, has been produced. Hence, the argument of the learned counsel that the respondent has failed to produce the relationship of the landlord and tenant does not find substance. The Patwari has appeared in evidence and proved the ownership of the Society. The Society was registered in the year 1945. It has been positively stated that Society is the owner of 24 acres of land and it has already constructed two schools, a hostel, society's office, guest office, mess and a *gaushala*. Furthermore, it is evident that on the request of the society, the Government released the land from acquisition. The learned counsel representing the petitioner also tried to contend that once the land has been acquired, the same cannot be released. In the considered opinion of

the Court, such a matter cannot be examined in a rent petition. In any case, the expression 'landlord' is not synonymous with the owner. The landlord is not required to prove its ownership in absolute terms.

8. As regards the second argument, it may be noted that the Society has already proved its ownership. Rather, this fact has been indirectly admitted by the petitioner while appearing as RW-4, when he admitted that the entire colony is known as Gurukul Colony.

9. In a case where the tenancy is old, it is not necessary for the respondent to give exact date of beginning of the tenancy.

10. The next argument of the learned counsel representing the petitioner is with regard to the lack of discussion by both the Courts below on the ground of bonafide necessity. This Court has carefully read the judgment. Both the Authorities have discussed the ground of personal necessity and formed an opinion against the petitioner. The Appellate Authority has noticed that the main ground for eviction are non-payment of rent and bonafide necessity. The ground of bonafide necessity has been discussed in in para Nos.29, 30, 31, 32, 33 and 34 of the judgment of the Appellate Authority.

11. Hence, there is no substance even in this argument of the learned counsel representing the petitioner.

12. Consequently, finding no merit, the Revision Petition No.7873 of 2018, is dismissed.

13. In Civil Revision No.5527 of 2019, the petitioner assails the correctness of judgment and decree passed by the Civil Judge, Junior

Division, Panchkula, on 29.11.2014, which has been affirmed by the First Appellate Court on 21.08.2018. The Courts have passed a decree for recovery of Rs.6,600/- along with interest at the rate of 9% per annum as the petitioner failed to pay the amount. The learned counsel representing the petitioner contends that in a Civil Suit, the rent could be recovered at the most for a period of three years prior to the date of filing of the petition. The learned counsel representing the respondent failed to address/put forth any convincing plea to prove that the suit for recovery filed to recover the amount beyond the period of three years prior to the filing of the suit.

14. The suit was filed on 04.09.1997. Hence, the judgment and decree passed by both the Courts below is modified and the respondent shall be entitled to recover arrears of rent for a period three years prior to the filing of the suit. In other words, the Society shall not be entitled to recover the arrears of rent beyond the period of three years prior to the filing of the suit.

15. With all these observations, Revision Petition No.5527 of 2019, shall stand partly allowed.

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

02nd May, 2022

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*