

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

107

**CR-4125-2019 (O&M)
Decided on : 18.05.2022**

Lucky Kumar (since deceased) through LRs

... Petitioner(s)

Versus

Manjinder Singh and another

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Vishal Handa, Advocate
for the petitioner(s).

Mr. Prateek Sodhi, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J. (Oral)

The petitioner is impugning the order dated 04.02.2019, passed by the learned Rent Controller, Amritsar, whereby, the rent petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for brevity 'the Act'), of the respondents-landlord, has been accepted and eviction of the petitioner-tenant from the demised premises bearing private No.12, forming part of property Khasra No. 926, situated at Abadi Kataria, Court Road, near New Rialto Cinema, Amritsar, has been ordered.

The case as pleaded by the respondent-landlord in the rent petition filed by him, may be noticed as thus:-

The respondent being Non Resident Indians (NRI), had been living in the Germany. They became owners of the property forming part of Khasra No. 926 min, situated at area Abadi Kataria, Court Road, Near Rialto Cinema, Amritsar (hereinafter referred to as 'the building') in the year 2000-2001, after purchasing it along with other co-sharers vide different title-deeds. The petitioner was inducted as a tenant by the previous owner in one of the shops bearing No. 12 (hereinafter referred to as 'the demised shop'), forming part of the above-said building. The tenancy of the

petitioner-tenant was oral as no rent note was executed in respect thereof and it was accompanied by a simple delivery of possession. The respondents stepped into the shoes of the previous owner and became landlords after purchasing the said building, since there was relationship of landlord-tenant between the petitioner and the previous owner of the demised shop. The said fact was duly intimated to the petitioner-tenant by the respondents/landlords. The respondents/landlords were wanting to return to India after their long stay in the Germany, as they wanted to set up a hotel-cum-restaurant business in the said building. They, therefore, required the entire building including the demised shop to set up their business after converting it into a hotel-cum-restaurant. Even though the respondents/landlords requested the petitioner/tenant to vacate the demised shop time and again, but in vain. The respondents/landlords, besides taking the ground of *bona fide* necessity, also pleaded in their rent petition that they had now been owners of the building for more than 5 years and they were neither in possession of any other building nor had they got any other property vacated after the commencement of the Act.

Upon being put to notice, the petitioner-tenant put in an appearance and filed leave to contest, which was allowed. Thereafter, he filed his written reply. In his written reply, he denied the relationship of landlord and tenant and asserted that the number of the shop in his possession was 02 and not 12. He further asserted that the building was not required by the respondent for starting any business.

On the basis of the pleadings and evidence led by the parties, the Rent Controller allowed the rent petition and ordered the petitioner-tenant to handover the vacant possession of the shop to the respondents-landlords. Thus, this revision petition.

Learned counsel for the petitioner-tenant submits that more than 30 different properties were purchased by the respondents vide separate sale-deeds, therefore, all such properties could not be considered as one single property.

Learned counsel further submits that since the respondents were owners of other properties also they could very conveniently start and establish their business in those properties.

Learned counsel also submits that the respondents had admitted during their cross-examination that they had let out two shops to two different tenants, who were running a liquor store and an electrical appliances shop, respectively. Furthermore, learned counsel submits that the respondents had not even applied for the requisite permission and licence to run a hotel, which was clearly indicative of the fact that they had no such plans of starting a hotel, and it was just a malicious attempt on their part to get the demised shop vacated in collusion with the co-owners, and thereafter, sell the building at a higher price. Learned counsel further submits that the rent petition was also bad for non-joinder of necessary parties, as the other co-owners were not even impleaded and hence, on the this ground itself, the rent petition should have been dismissed by the Rent Controller.

Per contra, learned counsel for the respondents-landlords while controverting the submissions made by the counsel opposite, submits that a tenant cannot dictate to the landlord as to where, why and how he should start or run his business. Learned counsel submits that the entire building was indeed purchased vide separate sale-deeds, but, it was due to the fact that there were multiple owners, having their separate shares, in the building. He also submits that even a single co-owner is competent to file an eviction petition on behalf of the other co-owners. He further submits that the necessity of the respondent stood duly proved in addition to fulfillment of the relevant statutory requirement prescribed under Section 13-B of the Act. He, thus, submits that the impugned order does not suffer from any infirmity, much less, illegality.

I have heard learned counsel for the parties and perused the relevant material on record.

A Non Resident Indian (NRI) landlord in order to seek eviction of a tenant under Section 13-B of the Act, is required to prove the following:-

- (i) that he/she is a Non Resident Indian (NRI).
- (ii) that he/she has returned to India permanently or for a temporary period.
- (iii) that he/she or his/her dependents requires the demised premises

for genuine reasons.

- (iv) that he/she is owner of the property preceding the 5 years from the institution of the ejectment proceedings.

Coming to the instant case, the petitioner-tenant has challenged the eviction order primarily on two grounds i.e.:-

- (i) requirement of the landlord was not genuine and
- (ii) rent petition instituted only by some of the co-owners to the exclusion of others was not maintainable.

Before proceeding further, it would be relevant to observe here that the requirement of a landlord is presumed to be genuine unless shown to the contrary, by way of some cogent evidence.

Merely because the landlord may not have applied or obtained necessary permission and licence for running his business, would not be enough to draw an adverse inference against him. Admittedly, the respondents in the instant case, are not in possession of the entire building. It is an admitted fact that the respondents instituted the eviction proceedings not only against the petitioner, but also against other tenants, which rather lends corroboration *qua* their intention and plans to convert the building into a hotel-cum-restaurant. It would also not be out of context to observe here that it is the landlord and the landlord alone, who is the best judge of his requirements and a tenant cannot be permitted to dictate terms to the landlord as to how, where and in what manner to start his business at any given place.

This Court does not concur with the submissions made by learned counsel for the petitioner/tenant that there was no *bona fide* necessity or requirement of the respondents/landlords and it was just a malicious attempt on their part to get the tenant evicted under the garb of starting a hotel in the building.

Learned counsel for the petitioners has also raised issue of maintainability of the rent petition on account of the other co-owners not being impleaded therein. However, this plea is not sustainable and deserves to be rejected outrightly.

The Hon'ble Supreme court in ***India Umbrella Manufacturing Co. Vs. Bhagabanbei, 2004(1) RCR (Civil), 686*** and ***Mohinder Prasad***

Jain Vs. Manohar Lal Jain, 2006(2) RCR (Civil) 36, has categorically held that even a co-owner can seek eviction of a tenant from the demised premises. Such a co-owner, who seeks eviction of a tenant from the demised premises itself does so on his own behalf, in his own right, and as an agent of the other co-owners. The consent of the other co-owners is assumed to have been taken unless it is shown to the contrary that the co-owners were not agreeable and despite their disagreement, a suit was instituted.

Furthermore, the submissions made by the learned counsel for the petitioners that since the respondents had purchased more than 30 properties vide separate sale-deeds and hence, all these properties having been separately purchased, would not constitute a single building, is also bereft of any merit. Merely because a building was purchased in segments vide separate sale-deeds would not by itself make them separate properties. Admittedly, the various segments of the buildings were in the ownership of different persons, therefore, it was natural that shares of all those different owners was purchased vide separate sale-deeds. The fact of the matter is that the demised shop along with other shops is part of a common building and can thus be safely taken to be a single property/building.

The apprehension of the petitioners that the eviction petition had been filed by the respondents/landlords with an oblique motive to get the demised shop vacated and thereafter sell the building at a higher price is misconceived. The Act provides for a remedy to the evicted tenant to apply for restoration of his possession, in case, a landlord transfers the demised premises through sale or otherwise or lets its out before the expiry of a period of five years from the date of taking possession.

As a sequel to the above, this Court does not find any merit in the instant revision petition and accordingly, the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

May 18, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*