

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

CR 4024/2022(O&M)

Date of decision: 06.12.2022

Rajan Gopal and others

.....Petitioners

Vs.

Surinder Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Amit Jain, Senior Advocate assisted by
 Ms. Anesha Jain, Advocate for the petitioners.

Nidhi Gupta,J.

Present revision petition is filed against the orders dated 29.2.2020 passed by Rent Controller, Khanna in Rent Petition No.9/1.7.2015 whereby the rent petition filed by the respondent/landlord under Section 13 of East Punjab Urban Rent Restriction Act,1949 (hereinafter referred to as 'the Act'), was allowed; and order dated 31.5.2022 whereby the appeal filed by the petitioners/tenants against order dated 29.2.2020 has been dismissed by the lower appellate Court.

Brief facts of the case are that respondent/landlord is owner of a shop situated at Ward No.20 Near Triveni Mandir within the Municipal limits of Khanna, District Ludhiana (hereinafter referred to as 'the demised premises'),

along with adjoining store. The shop was rented out to Kulbhushan Kumar, father of present petitioner nos. 1 and 2 and husband of petitioner no.3 in 1995 at a monthly rent of Rs. 1000/-. After the death of Kulbhushan Kumar in 2009, petitioners 1 and 2 being the sons and petitioner no.3 being the widow of Kulbhushan Kumar, continued paying rent to the respondent @ Rs.1000/- per month. As such, there existed relationship of landlord and tenant between the parties.

The respondent sought ejectment of the petitioners from the demised premises on account of arrears of rent; and because the demised shop was required by him for his bona fide urgent personal need as he wanted to start the business of Karyana Shop, and the store in his possession was insufficient and inadequate for starting the said business. It was further stated that the respondent had decided to reconstruct the store and shop in such a manner as to be able to settle his son Deepak Kumar who was currently doing a private job at a meagre salary, and the respondent was also doing a private part-time job in a bakery, but with rising prices it was proving difficult for them to make ends meet. It was stated that the demised premises was located in a thickly populated area and was suitable for starting business of a Karyana shop. It was further stated by the respondent that he did not own any other similar shop, and had not vacated any such building within the Municipal limits of Khanna after the commencement of the Rent Act. It was on the basis of the above averments and related evidence on part of the respondent, that his Rent Petition was allowed by the Id. Rent Controller, and the said order was also upheld in appeal by the Lower Appellate Court.

Ld. Sr. Counsel for the petitioners submits that the authorities below have accordingly, ordered the eviction of the petitioners from the demised

premises primarily on the ground of bona fide necessity of the respondent/landlord. It is submitted that however, this finding of the Courts below is contrary to the evidence on record.

Ld. Sr. Counsel painstakingly and in great detail took me through the record of the case, including the various depositions/ statements of the parties, and other evidence, to submit that the respondent/landlord himself had admitted in his cross-examination that he owned one shop on Malerkotla road; and his wife had one shop; and he had sold another shop on Malerkotla Road, Khanna just six months after purchasing the same. It is submitted that in view of this admitted position, it was clear that the respondent had as many as three other properties and he had sold off the same. Moreover, none of these facts were mentioned by the respondent either in his petition, or in his affidavit, or examination in chief, which showed his malafide, that he had withheld important relevant information from the Id. Courts below. It is submitted that the fact that the respondent had other properties has not been taken into consideration by the learned Appellate Authority, and therefore, the bona fide need of the respondent was not made out at all, and therefore, the Courts below were in error in ordering the ejection of the petitioner from the demised premises.

It is further submitted that in contradiction to the above cross-examination of the respondent-landlord, PW-2 Deepak Kumar son of the landlord in his testimony claimed that the respondent landlord was in ownership of some shops of which he had no idea. It is submitted that it was not believable that the son of the respondent would not have any idea regarding the shops owned by the father, and therefore, the testimony of the abovesaid witnesses was deliberately misleading and contradictory; and the Id. Courts below have not

taken into consideration the fact that the respondent/landlord had concealed material facts.

It is further submitted that the bona fide necessity of the landlord is not borne out even from the site plan Annexure P-1 which shows that the adjoining store which is admittedly in the possession of the respondent is far bigger than the shop which is rented out to the petitioners.

It is further submitted that son of the respondent/landlord Deepak is admittedly an MBA and in a private job reported to be earning Rs.8000/- per month and therefore too, bona fide need of respondent is not made out. No other argument is made on behalf of the petitioners.

Heard learned Sr. Counsel for the petitioners.

Learned Senior Counsel for the petitioners has very ably and persuasively taken me through the record to submit that no bona fide requirement of the landlord is made out and that there is material concealment on his behalf.

However, a perusal of para 19 of the order dated 31.5.2022, passed by the Ld. Appellate Court shows that it has been clearly recorded therein that the respondent has sold his shop situated at Malerkotla Road, Khanna in the year 2009, and the shop owned by the wife of the respondent was also sold by her in 2011, and son of the respondent PW2 Deepak Kumar has stated in his cross-examination that his father/ the respondent herein had sold the said shop about 15–20 years ago. Admittedly, the present Rent Petition was filed in the year 2015. Therefore, clearly at the time of filing the ejectment petition the respondent neither occupied nor owned any other similar non-residential building within the Municipal limits of Khanna except the store adjoining the demised premises.

Learned appellate Court has further recorded that the respondent has '*voluntarily given the details of shops sold by him prior to the filing of this case*'.
given the details of shops sold by him prior to the filing of this case'.

Accordingly, it is clear that there is no concealment on behalf of the respondent. It is also established on record by concurrent findings of both the Rent Controller, and the appellate Authority, that at the time of filing of the rent petition neither the respondent nor his son were occupying any other building or rented land in the urban area concerned for the purpose of their business.

Moreover, in my considered view it is sufficiently borne out on record that the respondent has bona fide requirement of the demised premises inasmuch as he wants to settle his son Deepak Kumar by opening a Karyana store by combining the demised premises with the adjoining store which is already in his possession. Even assuming the respondent was working in bakery with his brother, same was on salary basis, and now he is 70 plus years in age and cannot any longer work. And even if his son Deepak Kumar was employed elsewhere at a salary of Rs. 8000/- per month, then with rising prices, inflation, and stated growth of family of the respondent, the bona fide requirement of the respondent is clearly made out. Moreover, as has been laid down in numerous judgments of this Court, as also the Hon'ble Supreme Court, the landlord is the master of his needs, and it is not for the tenant to advise him as to his needs or how to fulfil them. The tenant cannot dictate terms to the landlord as to how or in what manner he should use or not use the premises owned by him.

Further, as per Section 13 (3) (a) (i) of the 1949 Act, there are three basic mandatory ingredients which require to be pleaded in cases of bona fide personal necessity which are that (a) he requires it for his own occupation; (b) the landlord is not occupying another residential building in the urban area concerned; (c) he has not vacated such a building without any sufficient cause after the commencement of the Act in the said urban area. In the present case as

is evident from the above discussion, all the requirements under the above provision are fulfilled.

As such, finding no merit in this revision petition the same is hereby dismissed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

06.12.2022
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No