

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4752-2019 (O&M)

Date of decision:29.03.2022

Hansraj

...Petitioner

Versus

Rajeev Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma
Mr. Rohit Nagpal, Advocates for the petitioner

Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh Meho and
Mr. Gautam Goyal, Advocates for the respondent

ANIL KSHETARPAL, J

1. QUESTION:-

1.1 The following question of seminal importance arises for consideration:-

“Whether a perpetual lessee of a plot, who has been conferred rights akin to ownership, is entitled to maintain an eviction petition under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the 1973 Act') seeking the eviction of his tenant, from his building constructed thereupon? ”

1.2 While assailing the concurrent findings of fact arrived at by the Rent Controller as well as Appellate authority, the tenant has filed this revision petition under Section 15 (6) of the 1973 Act. Some facts are required to be noticed

2. FACTS

2.1 Late Sh. Narayan Dass was allotted the plot in question by Faridabad Complex Administration, on a perpetual lease, for a period of 75 years. As per the lease deed, the allottee was entitled to construct building on the plot, and to transfer, sell, mortgage the property in any manner, whatsoever, after taking permission from the authority, which allotted the plot. He constructed the building and leased out a portion of the same to the predecessor of the petitioner. After the death of Sh. Narayan Dass, the property in question fell to the share of the respondent-Rajeev Kumar. On 07.01.2017, he filed an eviction petition under Section 13 of the 1973 Act. As per his case, the respondent is liable to be evicted on the ground of non-payment of rent, the building having become unfit and unsafe for use and occupation, being in an old and dilapidated condition and also, on the ground of bona fide necessity of his son Sunny Dang. The petitioner contested the case on various grounds, including maintainability. In the first round, the petition was dismissed on 19.04.2018. However, the Appellate authority while reversing the judgment dated 14.12.2018 of the Rent Controller, remanded the matter back to the Rent Controller, for deciding the matter afresh. The Rent Controller ordered the ejectment of the petitioner vide order dated 10.01.2019, which has been affirmed in appeal by the Appellate authority on 16.07.2019. It may be noted here that the appellate authority has slightly modified the eviction order and held that the eviction is ordered on the ground of default of payment of rent and thus, the order of eviction will come into operation, only if the respondent does not pay the balance outstanding rent within a period of

60 days. The appellate authority has also reversed the order of eviction on the ground of building being unfit for use and occupation. However, the appellate authority has affirmed the findings of the Rent Controller with regard to the bona fide necessity of the petitioner.

3. ARGUMENTS

3.1 Heard learned senior counsel representing the parties and with their able assistance perused the paperbook alongwith the photocopy of the record which was provided by the learned counsel representing the landlord.

3.2 Sh. Akshay Bhan, learned senior counsel representing the petitioner contends that the eviction petition was not maintainable because the respondent himself is a tenant of the Faridabad Complex Administration, (now Municipal Corporation). Therefore, he does not fall within the definition of the expression "*landlord*". While elaborating, he relies upon a Division Bench judgment passed in '**Paramjit Singh Walia Vs.Jagdish Mitter etc.**' 2015 SCC Online P&H 20480. He further contends that the landlord failed to prove his bona fide necessity as he is in occupation of a commercial premises.

3.3 Per contra, Sh. Puneet Jindal, learned senior counsel representing the respondent while refuting the argument of the counsel for the petitioner, contends that the respondent does not fall within the meaning of expression "*tenant*" as defined in Section 2 (h) of 1973 Act. While drawing the attention of the Court to the definition of the tenant he contends that the lessee of a Municipal Committee, Council or Corporation or a Notified Area Committee, does not fall within the

definition of tenant as given in the 1973 Act, and therefore, the aforesaid judgment does not apply. While elaborating, he submits that respondent was allotted a plot on which he claims to have constructed a building, hence, the respondent is the owner of the building. He, hence, submits that in any case the respondent, being owner of the building, is entitled to seek ejectment. While countering the before-mentioned argument of the opposite counsel, the learned counsel contends that the landlord has a bona fide necessity to settle his second son Sunny Dang in the tenanted premises, who is, at present, running his business from the residential property.

3.4 Keeping in view the aforesaid issue, it becomes important to deeply examine the meaning of expressions “*landlord*” and “*tenant*” in the 1973 Act. In Section 2(c) and 2 (h) which are extracted as under:-

“2 (c) “landlord” means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter provided, and every person from time to time deriving title under a landlord.

2(h) “tenant” means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant

continuing in possession after the termination of his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market, cart stand or slaughter house or of rents for shops has been framed out or leased by a municipal town or notified area committee.”

3.5 On a careful reading of Section 2(c), it is evident that the expression “*landlord*” includes a person, who has sublet any building or rented land, in the manner hereinafter provided. The Division Bench in **Paramjit Singh Walia's case (supra)** while interpreting Section 2(c) held that any person who has not sublet any building or rented land, in the manner provided in the Act, shall not fall within the definition of the expression “*landlord*”. Therefore, he cannot maintain a petition under the 1973 Act. However, this aspect needs thorough examination of the facts in the present case. As already noticed, the predecessor of the respondent late Sh. Narayan Dass was allotted a perpetual lease of the plot for a period of 75 years by Faridabad Complex Administration. It was provided that he will construct the building after getting the building plan sanctioned. There was no restriction on letting out the building or

the land. The lessee was also permitted to sell transfer, mortgage and assign the plot or any part thereof, with the consent of the lessor.

3.6 In the considered view of the Court, such lessee, who holds perpetual lease, cannot be construed as a mere tenant as defined in Section 2 (h) of the 1973 Act. In fact, it is a hybrid agreement which is conferring rights akin to the ownership on the allottee. The plot was rented out only at the annual ground rent of Rs.1.25 per annum.

3.7 Moreover, it is evident that the definition of expression “*landlord*” includes any person for the time being entitled to receive rent in respect of any building or rented land, whether on his own account or on behalf or for the benefit of any other person. It also includes every person from time to time deriving title under a landlord. In the considered opinion of the Court, a person holding a perpetual lease falls in the ambit of a person who derives title under a landlord. He cannot be said mere tenant.

3.8 Moreover, on a careful reading of expression “*tenant*” as defined in Section 2 (h), it is evident that the tenant has been defined in a very expansive manner. The first part of the definition is inclusive whereas the second part excludes certain persons from its scope. In the second part, it is provided that the tenant means any person but does not include a person placed in occupation of a rented building or land leased by the Municipal Body or Notified Area Committee. Thus, in this case the predecessor of respondent was given the property on lease by Faridabad Complex Administration, which is a Notified Area Committee which has now been, taken over by the Municipal Corporation. Hence,

the respondent does not fall within the definition of the expression 'tenant' and consequently, he will not be covered within the expression *“includes tenant who has sublet any building or rented land in any manner hereinafter provided”* In other words, the respondent is not such a tenant who has sublet the building or the rented land in infringement of the provisions of the 1973 Act. Further, the respondent will fall within the definition of the expression *“landlord”* because he is entitled to receive rent in respect of any building or the rented land.

3.9 This aspect can be examined from yet another perspective. The respondent is the owner of the building. His father was allotted the plot. In such a situation, the respondent is deemed to have nearly become the owner of the building. Hence, the respondent is entitled to maintain an eviction petition under the 1973 Act. Reliance in this regard can be placed on a judgment passed by the Supreme Court in **1990 (1) SCC 193 Sushil Kumar Mehta vs. Govind Ram Bohara (dead) through his L.Rs.** In the aforesaid case, a civil suit filed by the landlord was decreed ex-parte. The application under Order 9 Rule 13 to set aside the ex parte decree was dismissed. The aforesaid order was confirmed in the appeal as well as in the revision petition. In the execution application, the tenant, for the first time, objected to its maintainability on the ground that the civil court has no jurisdiction because the provisions of 1973 Act were applicable. In that context, the Supreme Court, after thoroughly examining the provisions of the Act, held that since only some part of the land was rented out by the Municipal Committee and the building was constructed by the landlord,

therefore, the proceedings under 1973 Act were maintainable before the Rent Controller and the civil court has no jurisdiction to order eviction of the tenant who has the protection of 1973 Act. In the present case, the building has been constructed by the predecessor-in-interest of the respondent. Though, the learned senior counsel has tried to draw the attention of the Court to the deposition of the respondent to contend that the building was constructed by the Faridabad Complex Administration, however, one sentence in the deposition cannot be read in the manner as suggested by the learned senior counsel. The aforesaid sentence cannot be read in isolation of the entire statement of the respondent. On a careful reading of the allotment letter, Ex.R1, it is evident that the lessee was required to construct the building, after obtaining sanction of the building plan, at his own expenses. Such being the position, the oral evidence cannot be construed in the manner suggested by the learned senior counsel representing the petitioner.

3.10 Consequently, there is no substance in the first argument of the learned senior counsel. It is declared that a person who has been granted perpetual lease of a plot possessing rights akin to the ownership is entitled to maintain an eviction petition, against his tenant from the building constructed thereupon under the 1973 Act.

3.11 Now, the Court proceeds to examine the next argument. Learned senior counsel representing the petitioners while assailing the correctness of the findings arrived at by the courts below, with regard to bona fide necessity of the landlord contends that the landlord had no bona fide necessity. He submits that the respondent is admittedly in

possession of commercial premises.

3.12 On a careful reading of the eviction petition, it is evident that the respondent has disclosed that he is running a business under the trade name M/s Gaurav Trading Co. from commercial premises alongwith his brother and the other son Gaurave Dang. Furthermore, he has pleaded that Sunny Dang is running his business since 2014 in wholesale of Fast Moving Consumer Goods. The family has shifted to another premises for their residence. Sh. Sunny Dang, while deposing, has reiterated the aforesaid facts. The learned counsel representing the tenant despite putting searching questions to Sunny Dang in his cross examination, failed to impeach his credibility.

3.13 In the humble opinion of this Court, there is no error in the findings of fact arrived at by the courts below.

3.14 Furthermore, while hearing the revision petition the under Section 15 (6), the scope of revisional jurisdiction of this Court is limited. Reference in this regard can be placed on **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh 2014 (9) SCC 78.**

3.15 Consequently, finding no merit, the revision petition is dismissed.

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

29.03.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE