

**101 IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**C.R. No. 1012 of 2016 (O&M)  
Date of Decision: 15.03.2023**

Kishan Lal Vig (Deceased) through LRs

.....Petitioners(s)

Versus

Sunder Lal

.....Respondent

**CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Suman Jain, Advocate,  
for the petitioner(s).

Mr. Shiv Kumar, Advocate,  
for the respondent.

**MAHABIR SINGH SINDHU. J.**

Present revision has been filed under Section 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short “the Act”) against the impugned judgment dated 23.10.2015, whereby learned Appellate Authority accepted the appeal of respondent/tenant and set aside the eviction order dated 29.08.2014, passed by Rent Controller, Faridabad.

**2.** Brief facts.

**3.** Petitioner/landlord filed a petition under Section 13 of the Act on 12.11.2008 for eviction of respondent from the shop in question on following grounds:-

*(i) Non-payment of rent;*

*(ii) Ceased to occupy the shop in question.*

*(iii) bona-fide requirement;*

**3(i)** Petitioner averred that respondent is a tenant on monthly rent of Rs.200/- and he is in arrear of the same w.e.f. 01.07.2008 to 31.10.2008.

It is further averred that son of the petitioner, namely, Rakesh is selling domestic goods, while putting a counter on the main gate of their house and as such, the shop in question is required for his use & occupation; but despite repeated asking, the respondent did not vacate the same: hence that resulted into filing of the rent petition.

4. Upon notice, the respondent appeared and opposed the petition on several grounds, *inter-alia* that petitioner declined to accept the rent and moreover, he did not give any receipt for the rent already paid to him from time to time. The respondent also refuted the claim of petitioner for *bonafide* requirement of shop in question while submitting that his son Rakesh is running the business from a proper place and even the adjacent shop, rented out to one Ujagar Singh, has also been vacated. Also submitted that petitioner has a godown on the backside of their house, which can be used by abovesaid Rakesh for his business, if so desired. Respondent also raised the plea of concealment of fact to the extent that petitioner did not disclose about the eviction of another tenant Ujagar Singh from the second shop. Hence prayed for dismissal of the rent petition.

5. On the basis of pleadings of both sides, learned Rent Controller framed the following issues:-

- 1) *Whether the respondent is liable to be evicted on the grounds mentioned in the petition? OPP*
- 2) *Whether the petition of the petitioner is not maintainable in the present form? OPR*
- 3) *Whether the petitioner has no cause of action to file the present petition? OPR*
- 4) *Whether the petition has become infructuous? OPR*
- 5) *Whether the petition is barred by principle of res-judicata? OPR*
- 6) *Relief.*

6. In order to prove his case, petitioner examined six witnesses, namely, Sat Parkash as PW-1, appeared himself as PW-2, Rakesh as PW-3, Rajesh as PW-4, Balwan Singh as PW-5, Kamal Kukreja as PW-6 and also tendered documentary evidence.

7. On the other hand, respondent examined RW-1 MCF Clerk NIT, RW-2 Rajeev Deepak, RW-3 Prem Kumar, RW-4 respondent Sunder Lal himself, RW-5 Aman Singh-Draftsman, RW-6 Shyam Lal-Clerk, RW-7 Kshetarpal Singh, RW-8 Jaspal Singh, RW-9 Virender Kumar and brought on record certain documents to refute the claim of petitioner.

8. It is relevant to mention here that during the pendency of rent petition, the original petitioner, namely, Krishan Lal Vig died and for pursuing the matter, his both sons i.e. Ravinder and Rakesh were brought on record.

9. After hearing both sides and upon taking into consideration the material on record, learned Rent Controller allowed the petition on the ground of *bona-fide* requirement of petitioner, *vide* judgment dated 29.08.2014 and directed the respondent to hand over the vacant possession of the shop in question within two months from the date of judgment.

It is noteworthy that learned Rent Controller while allowing the eviction petition, observed that petitioner has failed to prove the remaining two grounds i.e. (i) non-payment of rent and (ii) that ceased to occupy the shop in question.

10. Feeling aggrieved against the judgment of eviction, the respondent preferred an appeal and the same was allowed by learned Appellate Authority while passing the impugned judgment dated 23.10.2015: hence, present revision.

**11. CONTENTIONS:-****ON BEHALF OF THE PETITIONER**

**11.1** It is contended that RW-2 Rajiv Deepak as well as RW-4 Sunder Lal (respondent) categorically admitted that Rakesh, for whose bona-fide requirement, the rent petition was filed, is selling the domestic goods while putting a counter on the main gate of the house; hence the ground of *bonafide* requirement stands duly established; but learned Appellate Authority has failed to consider this aspect of the matter in true perspective, hence the impugned judgment is not legally sustainable.

**11.2** Further contended that learned Appellate Authority committed grave error while ignoring the fact that respondent is having two shops from where he has been running his business of photography and he has ceased to occupy the shop in question. Even the respondent himself, while appearing as RW-4, admitted that he is running his business under the name & style “Deepak Studio at Neelam Chowk, Faridabad”, apart from having another premises i.e. SCF No. 61, Sector 15, Faridabad.

**11.3.** Lastly, contended that petitioner had got vacated the adjacent shop in a separate rent petition from one Ujagar Singh for his another son, namely, Ravinder; hence there was no concealment on his part to that extent, as alleged by the respondent.

**ON BEHALF OF THE RESPONDENT:-**

**11.4** Contended that after the demise of original petitioner-Krishan Lal Vig, the ground of personal requirement does not survive any more; hence, the petition is liable to be dismissed only on this ground.

The learned counsel while referring to an order dated 09.02.2012 (Ex.RW8/2) contended that petitioner had successfully evicted Ujagar Singh

from his another shop and as such, the *bonafide* requirement of petitioner is no longer existing as on today.

**11.5** Also contended that there is no evidence on record to prove that respondent is running his business either from Neelam Chowk; or at SCF No. 61, Sector 15, Faridabad; hence the contention of petitioner in this regard is liable to be rejected.

**11.6** Again contended that petitioner is having a godown on the backside of their house hence his son Rakesh can utilize the same for running his business, if so desired. Still further submitted that learned Appellate Authority has rightly set aside the eviction order; hence, no interference is required by this Court while exercising the revisional jurisdiction under the Act, specially when the petitioner has actively concealed the factum of eviction about the second shop from Ujagar Singh.

**12.** Heard learned counsel for the parties and perused the records.

**12(i)** There is no dispute that eviction petition was filed by Krishan Lal Vig (since deceased), *inter-alia*, on the ground that shop in question is required for use & occupation of his son, namely, Rakesh for running business. Also claimed that Rakesh is selling domestic goods while putting a counter on the main gate of their house. A perusal of site plan (Ex.P-1), clearly indicates that shop in question is the part of building No. 1-C/57, NIT, Faridabad, comprising of residential house and two shops owned by aforesaid Kishan Lal Vig.

In order to prove the issue of personal necessity, petitioner himself appeared as PW-2 and reiterated the version as narrated in the petition. Apart that, his son, Rakesh stepped into witness box as PW-3 and he also corroborated the version of PW-2. Still further, PW-4 Rajesh while supporting both the above witnesses, deposed that Rakesh does not have any

other shop; rather he is running the business while putting a temporary counter outside the house.

13. Although, *bonafide* requirement of petitioner has been vehemently denied by the respondent, but there is sufficient material on record to that effect.

Even learned Rent Controller, while dealing with this aspect of matter, came to the following conclusion:-

*“17.....From the perusal of the file it no where appears that there is active concealment of the fact as it is nowhere mentioned that the said shop was got vacated by the petitioner on the ground of bonafide necessity, or most importantly for his son Rakesh. In case where the petitioner has two sons, he can get the shop vacated for his other son and as such the concealment if any is not fatal to the present case.*

*18. However, as far as the bona-fide requirement by the petitioner for his son is concerned, the petitioner and his other witnesses have stated in their evidence that his son Rakesh puts the counter outside the house and earn his livings. Moreover, in its affidavit Rajeev Deepak as RW-2/A has admitted to the fact that Rakesh puts a counter on the main gate of the premises in question and sells domestic goods.*

*19. Further, the respondent pleaded that there is a godown beside the shop in question and that can be used or was rather used by the petitioner’s son Rakesh. As such there is no bonafide need for the present shop in question.”*

14. The above conclusion of the Rent Controller was over-turned by the Appellate Authority while accepting the appeal in the following manner:-

*18. PW-2 KishanLal and PW-3 Rakesh tried to give such an impression that the shop is lying locked, the shop is required bonafide, PW3 Rakesh is running his business by installing a counter on both sides. However, due to contradictory statements*

*of PW-2 and PW-3 it is not proved to the satisfaction of the court whether the need of landlord is genuine or not. If the version of PW-2 is believed that PW3 is running his business by installing a counter on road side, the statement is countered and diffused by the admission of PW3 that he used to supply on order to shops. It means that he is not running his business by installing the counter.*

*If the statement of PW2 is believed then Ujagar Singh was never a tenant and no shop was vacated and possession was not handed over to them. But this is also diffused by the admission of PW3 that Ujagar Singh was tenant in the adjoining shop and the said shop was vacated and possession was handed over to landlord.*

*This factual position is also affirmed and proved by RW8 Jaspal Singh son of late Ujagar Singh. He stated that adjoining shop was occupied by them since 1960. The landlord has instituted an eviction petition which was decreed. He further stated that the said order was challenged before the Hon'ble High Court but during the pendency of CR No. 3438 of 2004 Ujagar Singh father of RW8 has vacated the shop and handed over its possession. This fact was brought into the knowledge of Hon'ble High Court and then Hon'ble Mr. Justice R.K. Jain was pleaded to pen down it in order dated 9.2.2012. Certified copy of the same is Ex.W8/2.*

*In this way, as per the admission of PW3, RW8 and in the light of document Ex.RW8/2 the claim of landlord is falsified that no shop was vacated to him since 1949.*

15. Upon perusal of the material available on record, it is clearly discernible that petitioner raised the ground of personal necessity for use and occupation of shop in question by his son, namely, Rakesh. So far as the factum of selling goods by above Rakesh while putting a counter in front of the house is concerned, the same has been duly acknowledged by the

respondent and his witness. For reference, testimonies of RW-2 Rajeev Deepak as well as respondent-RW-4 Sunder Lal are extracted as under:-

**RW-2 Rajeev Deepak**

*“.....As a matter of fact, Mr. Rakesh puts a counter on the main gate of the premises in question and sells domestic goods.”*

**RW-4 Sunder Lal (tenant)**

*“.....As a matter of fact, Mr. Rakesh used to put a counter on the main gate of the premises in question and sells domestic goods till February, 2012.”*

It is duly proved on record that second shop was rented out to one Ujagar Singh and qua that, eviction proceedings were going on at the time of filing the present rent petition. Also borne out from the records that eviction proceedings against Ujagar Singh were finalised on 09.02.2012 (Civil Revision No. 3438 of 2004 titled as ‘Krishan Lal versus Ujjagar Singh’). Even otherwise, it is matter of record that present eviction petition was filed on 12.11.2008; whereas, litigation regarding second shop came to an end, vide order dated 09.02.2012, therefore, there was no concealment on the part of the petitioner in any manner to that extent. Hence, the objection raised by respondent in this regard is rejected.

**16.** Law is well settled that tenant cannot dictate the term to the landlord, as to how or in what manner, he should use his premises; rather it is for the landlord to decide the use of his property according to requirement, from time to time. Thus, the contention of the respondent that petitioner is having second shop vacated by Ujagar Singh and/or that he has a godown on the back side of the house for use by Rakesh, is liable to be rejected. A *fortiorari*, reliance in this regard can be placed on ***Prativa Devi Versus T.V.***

**Krishnan (1996) 5 SCC 353**, wherein, the Hon'ble Supreme Court held *inter-alia* that :-

*"....The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.*

Again in **Ragavendra Kumar Versus Firm Prem Machinery & Company (2000) 1 SCC 679**, it was held by Hon'ble Supreme Court that:-

*"It is settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter."*

17. Thus, in view of the categoric admissions by RW-2 Rajeev Deepak and RW-4 Sunder Lal, minor contradictions noticed by the Appellate Authority in the testimonies of PW-2 & PW-3 are of not much relevance. As a result thereof, the conclusion recorded by 1d. Appellate Authority while reversing the finding on the issue of *bona-fide* requirement of petitioner is totally unfounded.

18. In view of the above, there is no hesitation to hold that *bonafide* requirement of petitioner, for use & occupation of the shop in question by his son, namely, Rakesh is duly established and conclusion recorded by learned Rent Controller to that effect is held to be valid.

19. Although, arguments were raised by both sides extensively that respondent has ceased to occupy the shop in question, but the same shall pale into insignificance for the reason that present petition is allowed on the ground of *bonafide* requirement of the petitioner.

20. No other point was raised by either of the parties.

**21.** Consequently, present revision is accepted; the impugned judgment dated 23.10.2015 passed by learned Appellate Authority, Faridabad is set aside. As a result thereof, the judgment of eviction dated 29.08.2014 passed by learned Rent Controller is upheld and the rent petition stands allowed.

15.03.2023.

**(MAHABIR SINGH SINDHU)**  
**JUDGE**

SN

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