

CR-354-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-354-2017 (O&M)

Decided on:-03.11.2023

Shri Gian Singh

....Petitioner.

vs.

Dr. Bhupinder Singh

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate and
Mr. Varun Sandhu, Advocate,
for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ashok Sehgal, Advocate
Mr. Vaibhav Katoch, Advocate, and
Mr. K.S. Brar, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

CM-20452-CII-2023

Prayer in the present application is for impleading the legal
representatives of deceased-petitioner (Gian Singh).

Notice of the application.

Mr.Ashok Sehgal, Advocate accepts notice on behalf of the
non-applicant-respondent and raises no objection to the application for
impleading the LRs. of deceased-petitioner.

For the reasons mentioned in the application which is duly
supported by an affidavit, same is allowed and persons mentioned in para 2
of the application are ordered to be impleaded as legal representatives of
deceased-petitioner, for the purpose of pursuing the present revision petition.

Amended memo of parties is taken on record.

Main case

1. By way of present revision petition, challenge has been laid to the judgments dated 04.09.2014 and 24.10.2016 passed by the authorities under the East Punjab Urban Rent & Restriction Act, 1949, whereby, an eviction order has been passed against the petitioner-tenant on a petition filed by respondent-landlord.

2. Briefly stating, claiming himself to be owner/landlord of the premises in question i.e. SCOs Nos.39-40, Sector 17-C, Chandigarh, respondent filed an eviction petition against the petitioner-tenant from a portion thereof being Cabin No.1 on the first Floor. Eviction was sought on the grounds of arrears of rent as well as his own personal necessity. The relevant portion of pleadings as regards the plea of bonafide necessity as set-up by respondent-landlord in the eviction petition is reproduced hereunder:-

“That the petitioner is a qualified doctor and has passed M.B.B.S. in the year 1964. Thereafter the petitioner started practicing as a Physician at Kharar. The petitioner is residing at Chandigarh along with his family members. The petitioner is planning to start his own Poly Clinic with all routine facilities, like ultra sound, x-ray etc. for admitting patients as in-door patients. The petitioner will use the basement of the demised premises for installation of ultra sound machine, x-ray machine and other machines and laboratory for medical tests. Ground floor will be used for reception, consultancy and operation theater and first and top floors will be used for in-door patients and for their treatment. The petitioner will employ qualified staff for proper running of the Poly Clinic.”

3. The prayer in the eviction petition was strongly opposed at the hands of petitioner-tenant while contesting the same, disputing the factum of bonafide need of the respondent-landlord.

4. During trial, since the petitioner-tenant having tendered the arrears of rent, therefore, the said ground did not survive. As regards the plea of bonafide necessity of respondent-landlord, the Rent Controller vide judgment dated 04.09.2014 recorded a finding in his favour while allowing the eviction petition against the petitioner-tenant. Aggrieved thereof, the petitioner-tenant filed first appeal, however, the same was dismissed vide judgment dated 24.10.2016 passed by the Appellate Authority.

5. Impugning the aforementioned judgments passed by the authorities below, while referring Ex.P-1 i.e. the allotment letter dated 04.12.1968 issued in favour of respondent-landlord, learned Senior counsel representing the petitioner-tenant submits that the allotment of site in question, containing the demised premises was for the purpose of "General Trade" only and thus, the respondent-landlord could not have sought eviction on the ground of his personal bonafide need for starting of a polyclinic/hospital therein, being an impermissible activity.

In support, learned Senior counsel places reliance upon Rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (for short, "1960 Rules") besides Schedule (1)(A) thereof, the same being relevant are reproduced hereunder:

"Rule 9. Use Of Site Or Building :-

The transferee shall not use the site or building for a purpose other than that for which it has been sold to him. In the case of commercial or industrial sites and commercial or industrial

buildings the transferee shall not carry on any trade or employ any industry other than that specified by the Estate Officer.

(2) Instead of specifying any particular trade or industry, the Estate Officer may specify that the transferee shall not carry on any trade or employ any industry other than General Trade Semi Industrial Trade, or Special Trade.

(3) The expression “General Trade”, “Semi-Industrial Trade”, “Special Trade”, “New General Trade” and “New Special Trade” shall mean one or, more of the trades respectively mentioned in Parts A, B and C of the Schedule I and Parts A and B of the Schedule II, annexed to these rules and shall include any other trade which is not so mentioned provided that such other trade is similar to and carried on in the same fashion as mentioned in the respective part of these Schedules:

Provided that the Chief Administrator, may, in the case of residential buildings, for reasons to be recorded in writing and with the prior approval of the Administrator, Union Territory, Chandigarh, allow such a building or portion thereof to be used for a purpose other than that for which the site was allotted subject to such conditions as he may by an order specify in this behalf:

Provided further that trades shall be classified in two categories as indicated in Schedule (II) annexed to these rules and conversion from a particular trade in Schedule ‘I’ to that in Schedule ‘II’ shall be allowed on payment of conversion charges as determined by the Chandigarh Administrator.”

Schedule I
(Rule 9)

A. (“General Trade”)

(i) Display/Sale of-

- 1. Aerated water*
- 2. Artwares*
- 3. Bakery products and confectionery goods*
- 4. Books and stationery; including drawing instruments*
- 5. Crockery and utensils*

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6. Domestic appliances and gadgets
7. Electrical goods/radios
8. Furniture
9. General merchandise
10. Hats, caps, turbans, including embroidering
11. Hosiery goods.
12. Ice, Ice Cream and mill products
13. Medicines
14. Ornaments and jewellery
15. Pan, Biri and cigarettes
16. Photo and mirror frames
17. Photographic goods
18. Poultry products
19. Provisions including toilets and taboconites
20. Readymade garments
21. Rubber stamps
22. Sports goods/musical instruments
23. Sewing machines
24. Suit cases/boxes
25. Seeds
26. Shoes and leather goods
27. Textiles.

(ii) Professions:-

1. Architects
2. Barbers
3. Doctors
4. Photographers
5. Opticians
6. Pen repairers
7. Tailors
8. Watch repairs
9. Dry Cleaners
10. Any other trade which is not covered under “Semi Industrial Trade” or “Special Trade” specified hereunder.”

No other argument has been addressed on behalf of the petitioner.

6. On the other hand, learned Senior counsel representing respondent-landlord submits that even on a perusal of the 1960 Rules as well as Schedule I-A (ii) forming part thereof, the Doctors as professionals have been permitted to carry out their work/activities from the premises allotted under the “General Trade” category and thus, the judgments passed by the authorities below warrant no interference as the bonafide need of the respondent-landlord was duly established on record.

7. I have heard learned counsel for the parties and gone through the paper book as well as the records, which have been provided by the learned counsels representing the parties concerned. I am unable to find substance in the submissions made on behalf of the petitioner.

8. A perusal of allotment letter dated 04.12.1968 (Ex.P-1 at page 139 of the records) shows that the allotment of site in question i.e. SCOs No.39-40, Sector 17-C, Chandigarh was for “General Trade”. Further, a conjoin reading of Rule 9 of 1960 Rules as well as part A(ii) of Schedule (1) which defines the term “General trade” shows that certain professionals including Doctors have been permitted to carry out their professions from such commercial premises/sites, allotted under the category “General Trade”. Thus, the arguments raised at the instance of learned Senior counsel representing the petitioner to the effect that eviction could not have been sought from the demised portion for setting up of a clinic; the respondent-landlord being a qualified M.B.B.S Doctor, holds no-good.

9. Moreover, from the records, it can be traced out that the

respondent-landlord, who is a qualified Doctor having passed out his M.B.B.S. in the year 1964; running his practice as Physician at Kharar while having residence at Chandigarh and intends to shift his practice to Chandigarh, plans to start his own Polyclinic with all facilities such as Ultra Sound, X-Ray etc. Once, a doctor has been permitted to carry out his professional activities from the commercial premises allotted under the “General Trade” category, the prayer made by the respondent-landlord setting up his bonafide need cannot be said to be in contradiction with 1960 Rules, in any manner. Above all, the bonafide need of respondent-landlord, being the transfer of his practice as qualified Medical Practitioner/Doctor from Kharar to Chandigarh being clearly made out, polyclinic sought to be set-up by the respondent-landlord, of course, shall always be regulated and governed by the Rules/Guidelines framed in this regard by the UT Administration i.e. allotment authority.

10. No illegality or perversity has been pointed out in the concurrent findings of fact recorded by the authorities below as regards bonafide need of the respondent-landlord, who intends to shift his practice from Kharar to Chandigarh as that of Medical Practitioner/physician being residing at Chandigarh. Even otherwise, in the limited revisional jurisdiction, as per the humble opinion of this Court, no interference is warranted with the findings recorded by the authorities below.

11. In view of the above, finding no merit in the present petition, the same is dismissed.

03.11.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No