

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

CR-7906-2017 (O&M)
Date of Decision: 31.01.2023

Vinod Kohli

..... Petitioner

Versus

Keemti Lal

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Deepak Sabherwal, Advocate,
for the petitioner.

Mr. Vipin Mahajan, Advocate,
for the respondent.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed by the petitioner/landlord under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, challenging the judgment dated 04.09.2017 passed by the Additional District Judge/Appellate Authority, Gurdaspur, whereby rent appeal filed by the respondent/tenant has been allowed and the eviction petition filed by the petitioner/landlord has been dismissed.

The brief facts, as mentioned in the pleadings, are that the petitioner filed a rent eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'), asserting therein that he is the owner and landlord of the premises in question. The respondent has been in possession of the premises as a tenant under the petitioner on the rent at the rate of Rs.200/- per month. The respondent-tenant has not been paying the rent since the year 2008,

therefore, he is liable to be evicted. Secondly, the petitioner was in requirement of the premises for his personal use and occupation because his son, namely Raghav Kohli was unemployed and aged about 22 years. The petitioner wanted his son to run independent business on the premises in question. The premises in question opens in the house of the petitioner and thus is suitable for opening the business for his son. To meet the requirements of the Act, he also pleaded in the petition that the petitioner was not in possession of any other vacant premises for business of his son in the same urban area nor had he vacated any such building in the said urban area after commencement of the Act.

Finding the case of the petitioner to be substantiated, the Rent Controller allowed the eviction petition. Aggrieved against the same, the respondent-tenant preferred an appeal before the Appellate Authority. The said appeal has been allowed; thereby; denying eviction. Hence, the present petition has been preferred by the petitioner-landlord.

Arguing the case, the learned counsel for the petitioner has submitted that the petitioner has proved on record all the ingredients; as required under the Act for seeking eviction of the respondent from the premises in question. The petitioner is not having any other shop for establishing his son in the business in the same urban area. Nor has the petitioner vacated any shop in the area only for getting the present shop vacated from the tenant. Qua the findings recorded by the lower Appellate Court, learned counsel for the petitioner has submitted that the lower Appellate Court has recorded perverse findings to the extent that it has

recorded that the son of the petitioner has already established his business in the adjoining shop. There is no evidence to show the said fact. Learned counsel has submitted that while appearing as a witness, the petitioner himself had explained that the son being unemployed was only sitting on the counter on the shop being run by the petitioner; and that it was not his independent business. The son is not even required to be examined as a witness to show his requirement. Learned counsel has relied upon judgment rendered by Hon'ble the Supreme Court in the case titled as **Mehmooda Gulshan Vs. Javaid Hussain Mungloo, 2017(1) R.C.R.(Rent) 273**. Moreover, it is not for the tenant to dictate terms to the landlord. It is the decision of the landlord to get the property vacated, if he requires the same for his purpose. Therefore, the findings recorded by the lower Appellate Authority deserve to be reversed and the findings recorded by the Rent Controller deserve to be upheld.

On the other hand, learned counsel for the respondent-tenant has submitted that the petitioner has not even pleaded in the pleadings that his son is not having any other property in the area in question and his son has not vacated any such shop in the area. Therefore, the requirements of the Act are not fulfilled. Learned counsel has relied upon judgment rendered by this Court in the case titled as **Rajiv Gupta Vs. Jiwan Ram (P&H) 2015(1) R.C.R.(Civil) 762**, in support of his argument. Learned counsel has further submitted that the son of the petitioner has not stepped into the witness-box to assert that he is intending to extend his business. Therefore, the petitioner could not have maintained the petition for that purpose.

Learned counsel has relied upon the judgment rendered by this Court in the case titled as **Manmohan Lal Vs. Shanti Parkash Jain (P&H), 2014(5) R.C.R.(Civil) 667**. Learned counsel has further submitted that the petitioner has concealed the fact that he was having a shop adjoining to the shop in question and he has wrongly shown the said shop as part of his house. Therefore, the petition deserves to be dismissed for this reason alone. Learned counsel has relied upon the judgment rendered by this Court in the case titled as **Sadhu Ram Verma Vs. Pawan Kumar (P&H), 2006(2) R.C.R.(Rent) 95**, to support his argument on this aspect. Learned counsel has further submitted that the petitioner is having four other shops in the same municipal area. Therefore, the eviction petition could not have been allowed by the Rent Controller and the same was liable to be dismissed.

As reply to the arguments raised by the learned counsel for the respondent, learned counsel for the petitioner has submitted that qua the assertion of the respondent that the petitioner is owning four other shops in the same municipal area, the respondent himself has placed on record the sale deed which shows that the said shops are not owned by the petitioner, rather, the same are under the ownership of the wife of the petitioner. Learned counsel has relied upon the judgment rendered by this Court in the case titled as **Jaswant Singh Vs. Jai Ram Singh (P&H), 1979(2) RentLR 184**, to buttress his argument that if the wife of the petitioner owns some property in the urban area that could not be a ground to defeat the petition filed by the petitioner as landlord of the premises in question. Moreover, the petitioner has specifically denied the fact that he is owner of the said shop,

while filing rejoinder to the written statement in the rent petition.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the petitioner. It is not even in dispute that the petitioner is the landlord and the respondent is the tenant in shop under him. So far as the ground of non-payment of the rent is concerned, that was rendered infructuous because the tenant had paid the rent with interest during the pendency of the appeal. However, the second ground taken by the landlord in the rent petition is qua personal requirement. The petitioner has duly pleaded the ingredients prescribed in the Act qua his personal requirement, as required under Sections 13(3)(a) and 13(4) of the Act, which read as under:-

“(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

(i) in the case of a residential [* *] building if -*

(a) he requires it for his own occupation;

(b) he is not occupying another residential [* *] building, [* * *] in the urban area concerned; and*

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

[(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service

or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord.]

[(i-a) In the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in Section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of Section 3 of the Act.

Explanation. - For the purposes of this sub-paragraph -

(1) the certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions; and

(2)"family" means such relations of the landlord as ordinarily live with him and are dependent upon him;]

*(ii) in the case of [****] rented land, if-*

(a) he requires it for his own use;

*(b) he is not occupying in the urban area concerned for the purpose of his business any other such [****] rented land, [****]; and*

*(c) he has not vacated such [****] rented land without sufficient cause after the commencement of this Act, in the urban area concerned;*

[(iii) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under

some improvement or development scheme or if it has become unsafe or unfit for human habitation;]

(iv) in the case of [any residential building] if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer or as a "registered practitioner" within the meaning of that expression as used in the Punjab Medical Registration Act, 1916, or for the residence of his son who is married, if -

(a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and

(b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord [shall not, except under sub-paragraph (i-a), be entitled] to apply under this sub-section before the expiry of such period:

Provided further that where the landlord has obtained possession of [a residential building or rented land] under the provisions of sub- paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraphs for the possession of any other building of the same class or rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-paragraph (iv) he shall not be entitled to apply again under the said sub-paragraph for the possession of any other building for the use of, or as the case may be, for the residence of the same son.

13(4)Where a landlord who has obtained possession of a building or rented land in pursuance of an order under sub-

paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (3) [does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under sub-paragraph (i-a) of paragraph (a) of sub-section (3), his family does not occupy the residential building, or, if possession] was obtained by him on behalf of his son in pursuance of an order under sub-paragraph (iv) of paragraph (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for a continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under sub-paragraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.

[(4-A) Where a tenant is evicted from a residential building or scheduled building in pursuance of an order made under section 13-A and the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord,-

(a) does not occupy it for a continuous period of three months from the date of such eviction; or

(b) within a period of three years from the date of such eviction of the tenant, lets out the whole or any part of such building, from which the tenant was evicted, to any person other than the tenant;

such evicted tenant may apply to the Controller, for an order directing that the possession of the building shall be restored to him and the Controller shall make an order accordingly.] ”

The pleadings of the petitioner in the rent petition fulfills the aforesaid ingredients of the Act qua the pleas regarding personal requirement of the petitioner. The petitioner has duly appeared as a witness before the Rent Controller and has even been subjected to the lengthy cross-examination. However, nothing substantial could be brought out from the said examination. So far as the requirement of pleading necessity for the son and examining the son as a witness to prove his personal requirement is concerned, learned counsel for the petitioner is right in submitting that the same is not required under the provisions of the Act. It is so clear from the reading of the bare language of Section 13(3)(a) of the Act; and as has been so held by Hon'ble the Supreme Court; as well; in case of **Mehmooda Gulshan's** case (supra). Therefore, the judgments relied upon by learned counsel for the respondent are of no help to him; and his arguments on that aspect are liable to be noted only to be rejected.

Learned counsel for the petitioner has laid much stress upon the necessity of the petitioner being not *bona-fide*, however, the Act does not require any *bona-fides* on the part of the landlord for getting his property back. The Clauses (a) and (b) of Section 13(3)(a)(i) and Clause (ii) of Section 13(3)(a) the Act are totally neutral to the intention of the landlord. Clauses of Section 13(3)(a)(i) and Clause (ii) prescribe only that the landlord may apply for getting possession of a property if he 'requires' it for his own occupation, if he is not in occupation of any other residential building, in case of residential premises, and if he himself is not occupying any rented premises, in case of commercial property. No element of 'necessity' is

introduced by the Act and no restriction of requirement being *bona-fide* is prescribed under the Act. Only Clause (c) introduces some element of discretion of the Court to see whether the landlord had not vacated any other similar building without 'sufficient cause'. Even in that case *bona-fides* in vacation of other premises is to be seen and not in the requirement of the present premises. Beyond that, there is no requirement of proving any '*bona-fide*' qua the requirement of the landlord. Therefore, except in a case where the landlord had vacated some other premises on which he himself was earlier a tenant; just to file the eviction petition against his tenant qua his own and other premises, there is no scope of reading the ingredient of "requirement" of landlord being '*bona-fide*', into the language of the Act. Needless to say that the only provision made in the Act to ensure the *ipso facto bona-fide* of the landlord at the time of eviction of the tenant is; as contained in Section 13(4) of the Act, which requires that in case, the landlord rents out the premises within a period of 12 months, after getting it vacated through the Rent Controller, then the tenant would be having a right to get the possession back. Besides this requirement, there is nothing in the Act to read into it the condition of any *bona-fide* intention in the personal requirement of the landlord. This condition of the requirement being '*bona-fide*' is being unnecessarily introduced into the provisions of the Act by various judgment of various Courts, which otherwise, was never intended by the legislature.

Another fallacy being introduced in the language of the Act is that 'requirement' of the landlord is being read as 'necessity' to be proved by

him. There is no legal warrant for this interpretation as well. The word used in the Act is 'requires' for his own 'occupation', in case of residential building and for his own 'use', in case of commercial property. None of these words or phrases envisages 'necessity' of the landlord. Needless to say that pedagogically the term 'requirement' represents element of volition or exercise of voluntary option for one out of several options, whereas necessity is emerging from element of compulsion or lack of any other option. Therefore, for filing eviction petition the landlord is not required to plead or prove 'necessity' or lack of option to him. He is free to plead any requirement which he deems appropriate, and if he has proved other facts mention in the section, then it is not for the Courts to look into the genuineness of his requirement. This aspect has been clarified even by the Hon'ble Supreme Court in the case of '**Balwant Singh @ Bant Singh and another vs. Sudarshan Kumar and another**' in **Civil Appeal Nos.231-232 of 2021**, decided on 27.01.2021, wherein it is reiterated that the tenant cannot dictate terms to the landlord.

Otherwise, a perusal of the site plan placed on record shows that the shop in question is situated on the G.T. Road and it comprises of the half of the front portion of the house of the petitioner. In fact, there are two premises curved out on the front side of the house, out of which one is let out to the respondent-tenant and qua which the present petition has been filed; and the other portion is being used by the petitioner himself for his own business. Although, the learned counsel for the respondent has submitted that on this aspect, the petitioner had not come to the Court with

clean hand in so far as he had pleaded in the petition that the adjoining shop was the part of the house, however, even this argument is bereft of any substance; because the site plan shows that this shop is, in fact, part of the house. Otherwise also, there is nothing to stop the petitioner from using any portion of the house for his personal purpose or for his business, as desired by him. Therefore, the petitioner is right in asserting that he is using the adjoining shop for his business and that there is no other shop for establishing business of his son.

Moreover, as is mentioned above, it is well established by now that the tenant cannot dictate the terms to the landlord qua the personal requirement of the landlord. Although, there are certain facts which indicate that the son of the petitioner has been sitting on the counter of the shop adjoining the premises involved in the present petition, however, even if the son is running the business in the adjoining shop, there is nothing to prevent him to enhance his business by getting the shop in question vacated and merging the same with the another shop so that he can enlarge the scope of his business. Needless to say that the landlord is under no legal obligation to remain poor only for the sake of ensuring riches to the tenant. Only prohibition in the Act is that landlord seeking eviction from commercial property himself should not be occupying any other commercial property as a tenant. Having another self owned commercial property is no bar to file an eviction petition. Even the landlord has a right to utilize his properties for enlargement of his business as such. There is no scope for infusing any extra socialism into the Act, other than already embedded in the provisions

of the Act, by the Court interpretations. There is already more than sufficient socialism embedded in the Act, where under Section 19, a landlord can be sent to jail even for using his own property as per his desire, just to please a tenant. Moreover, the record itself shows that the respondent-tenant has been utilizing the shop for the past about 50 years, thereby, depriving the landlord of full benefits of his property, and the law cannot be any more indifferent to the plight of the petitioner-landlord.

Accordingly, the present petition is allowed. The order passed by the lower Appellate Authority is set aside.

As a consequence, since the respondent-tenant has enjoyed the shop for a long time, therefore, he deserves to be directed to vacate the shop within a time bound frame. Hence, it is ordered that the respondent-tenant shall vacate the shop in question within a period of four weeks from today, failing which, the petitioner shall be entitled to take the possession of the shop even by requisitioning the police help; without requirement of any further orders from any Court.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

31.01.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No