

CR-1861-2023 (O&amp;M)

112

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

CR-1861-2023 (O&amp;M)

Date of decision: April 20, 2023

Balbir

....Revisionist

versus

Mahabir and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Sanjay Mittal, Advocate for revisionist (tenant).

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**ARUN MONGA, J. (ORAL)**

Petition herein is for setting aside impugned order dated 30.11.2018 passed by learned Rent Controller, Narnaul whereby eviction petition filed by respondent No.1 herein under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short 'Act of 1973') was allowed and revisionist was directed to handover vacant possession of shop in question within a period of two months. Further petitioner sought setting aside of impugned order dated 07.12.2022 whereby appeal filed by revisionist-tenant against aforesaid eviction order was dismissed.

2. Brief case, as pleaded in the petition is that respondent No.1-landlord filed eviction petition under Section 13 of the Act of 1973 seeking ejectment of Revisionist/ tenant from the demised premises i.e., shop. Revisionist is tenant since 1996 and in 2006, rate of rent was agreed as Rs.1,500/- per month which was increased to Rs.2,000/- in the year 2010 excluding house tax. Period of tenancy has elapsed and now revisionist is continuing in the capacity of statutory tenant. There are many other commercial and residential premises in the ownership of respondent No.1-landlord. Both sons of respondent-landlord are running a barber and beauty parlour shops and are earning. There is no personal necessity of

CR-1861-2023 (O&amp;M)

respondent No.1-landlord in respect of shop in question. On the other hand, revisionist-tenant has no other shop to run his business.

3. I have heard learned counsel for the revisionist and perused the record.

4. The relevant extract of the order passed by the learned Rent Controller reads thus:

*“21. After going through the evidence of parties and the documents placed on record, this court is of the view that it is for the landlord to decide as to the requirement on the ground of personal necessity and to choose the location and the tenant cannot dictate his terms to the landlord in selecting a particular location while discarding the other for starting the business. It has been laid down in number of authorities that the personal necessity of the landlord includes the necessity of his family members. This court is also of the view that shop in question is required by the petitioner for establishing business for his son and a tenant nowhere can dictate this fact to the petitioner that as the son of petitioner is assisting the petitioner, therefore, he is settled in that business and there is no need to set up any independent business in the demised premises. This court is therefore of the view that shop in question is bona fide required by petitioner for his son and there is nothing wrong if parents want to settle their grown up son by establishing a business for him.*

*22. The respondent has pleaded this fact before the Court that the petitioner has sold two shops situated adjacent to the shop in question and as such his claim is not maintainable. The petitioner was duly cross-examined on this point. In his cross-examination he has stated that earlier he was having three shops and he has sold one shop approximately 10 years ago. He has also stated that the shops adjoining the shop in question are not in his ownership as the same are in the ownership of his brother. PW2 Sube Singh has also stated this fact in his cross-examination that the shop which was sold by the petitioner is situated on Nizampur Road and that shop was sold many years ago. Even respondent no.1 while appearing as RW1 has admitted this fact in his cross-examination that except for these two shops including the shop in question there is no other shop in the ownership and possession of the petitioner. He has stated that he does not know in which year the other shops were sold by the petitioner. RW3 Kailash Chand has also admitted this fact in his cross-examination that except for the shop in question and that shop which is in the possession of the petitioner there is no other shop in the ownership or possession of the petitioner.*

*23. This Court is, therefore, of the view that there is no evidence on record as to when third shop which was in the ownership of the petitioner was sold by him. The petitioner has stated in his cross-examination that the third shop was sold by him approximately ten years ago and at that time there was no requirement of shop for his son Mukesh Kumar as at that time he was 15 years of age. This*

*Court is of the view that the petitioner is entitled to the vacant possession of the shop in question on the ground of bonafide personal necessity.”*

5. This finding was affirmed by the learned Appellate Authority in the following terms:

“26. The right and privilege of the landlord to choose the nature of business and place and the fact that the tenant cannot dictate the terms and advise him what line of action he should follow or what he should do and what he should not do has time and again been frowned upon by the Hon’ble Apex Court. It has also been held that a pragmatic approach is to be taken and the crucial date of litigation when the suit for eviction was filed although subsequent events can be taken into consideration for moulding the reliefs have to be kept in mind but the fact remains that the person who had started litigation cannot be expected to sit idle during the said period. The observations of the Hon’ble Apex Court in *Pratap Rai Tanwani Vs. Uttam Chand* (2004) 8 SCC 490 and *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and others* (2005) 8 SCC 252 are to this effect.

27. At this stage the ratio in case of *Surender Singh Versus Devender Mohan* 2008 (2) HRR 268 (P & H) has to be taken into consideration in which it has been observed that it is a settled law that requirement of landlord includes requirement of a member of his family who is dependent upon him or on whom landlord himself is dependent. Need of the landlord was held to be bonafide.

28. In the case of *Maganlal son of Kishanlal Godha versus Nanasaheb son of Udhaorao Gadewar* 2009 (1) RCR 16, the Hon’ble Apex Court has held that it is always a prerogative of the landlord that if he requires the premises in question for his bonafide use for expansion of business, this is no ground to say that the landlords are already having their business.

29. In case of *Iqbal Singh and others Vs. Sunil Arora and another* 2013(4) RCR (Civil) 44 it has been observed by Hon'ble High Court that the landlord is the best judge of his needs. If he considers the existing accommodation insufficient and his need is more for commodious accommodation, the tenant cannot dictate his terms and it is not for the Court to go into such a question to arrive at a different conclusion. Once the Court comes to the conclusion that the need is bonafide one, then the Court has not to sit over as a Judge over the requirement of the landlord for that purpose.

30. In case titled as *Krishan Lal Sood Vs. Sharda Sharma* 2008(1) PLR 627 it has been held that the landlord has freedom to see as to how he is to utilize his property and which of the properties owned by him is best suited for his need. The tenant is not to dictate terms for that. The suitability of any premises for the need of the landlord is to be considered as per the convenience of the landlord and his family members keeping in view their need.

31. At the cost of repetition, the only pre-requisite to seek eviction is that the landlord has to prove his bona fide requirement for his own purpose or for the purpose of family. There is no requirement

CR-1861-2023 (O&amp;M)

*of registration with employment exchange. The tenant has failed to show that Mukesh is gainfully employed or working somewhere else. The sale of another shop 10 years back also does not dent the case of landlord especially when the son Mukesh was very young. In the instant case, the landlord-respondent No.1 has proved and established by convincing evidence the bona fide personal need of demised shop to settle his son Mukesh.”*

6. I am unable to persuade myself with the argument being canvassed by learned counsel for revisionist that in the absence of landlord-respondent No.1 having specifically stated as to what nature of business is required to be done in the shop in question, the Authorities below ought not to have held that *bona fide* personal need of the landlord was proved. However, record reflects otherwise. Not only landlord had specifically pleaded personal necessity, but he successfully established that one of his sons is unemployed and shop is required to earn his livelihood. Landlord is a barber. Whether or not he has to expand his business by opening a saloon or barber shop or his son wants to set up another business, is entirely the decision of the landlord and he is not bound to disclose it for seeking the eviction of the tenant.

7. There is no room for interference in the aforesaid valid reasons recorded by learned Rent Controller and learned Appellate Authority and no fault can be found against their findings returned against the petitioner.

8. No material irregularity in law or procedure has been committed by learned Authorities below, so as to exercise extraordinary revisional jurisdiction herein.

9. However, in order to be equitable to the revisionist-tenant, who has since been running shop of tailor since 1996, he deserves reasonable time to vacate premises in question.

10. Accordingly, six months' time is granted to Revisionist-tenant to vacate premises in question to make alternative arrangement, subject of course to

CR-1861-2023 (O&M)

upto date month to month payment of rent, as was being paid earlier. In case, there are any arrears, same shall be cleared within a period of one month.

11. Disposed of, accordingly, dispensing with notice to respondent No.1-landlord.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

April 20, 2023  
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No