

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

CR-2198-2021(O&M)

Reserved on:-25.5.2023

Date of decision:-1.6.2023

Krishan Lal and others

...Petitioners

Versus

Ashok Jain

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Avnish Mittal, Advocate
for the petitioners.

Mr.Kanwaljit Singh, Sr.Advocate with
Mr.Vikas Chaudhary, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/landlord Ashok Jain son of Jai Chand, resident of House No.5368/C, Nicholson Road, Ambala Cantt. had brought a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act) against respondent-tenant-firm Krishan Lal and sons through its partner, Shop No.5368/C/II, Nicholson Road, Ambala Cantt. through legal representatives of Krishan Lal i.e. his sons Vinod Bansal, Parmod Bansal and Satish Bansal seeking ejectment of respondents from Shop No.5368/C/II Nicholson Road, Ambala Cantt.(hereinafter referred to as the demised shop).

2. As per the case of the petitioner/landlord, Krishan Lal father of respondents No.2 to 4 was inducted as a tenant in the demised shop and

after his death respondents No.2 to 4 stepped into his shoes acquiring status of tenants in the demised shop, on payment of rent @ Rs.700/- per month; the demised shop had been rented out to Krishan Lal for doing business of Halwai and after his death, the respondents were also doing the same business but about 3/3 ½ years prior to filing of the petition, the respondents have changed their business without written consent or permission of the petitioner; the respondents came in arrears of rent w.e.f. January, 2013 onwards; earlier the petitioner had filed a petition against Sanjeev etc. regarding shop No.5368/C/2 and one shop had been got vacated for the business of his daughter, who is doing business there; one shop was sold by petitioner several years back.

The petitioner claimed that he requires the shop in question for his personal use and occupation because near the shop of the petitioner/backside the shop of the respondent, there is a shop of son of petitioner, who is doing business of scientific equipment/material and his business is flourishing and daughter-in-law of the petitioner, namely, Neha Jain has obtained several diplomas and she wants to enlarge the business of her husband Ankit Jain; the petitioner requires the shop in dispute for his son Ankit Jain and Ankit Jain's wife Neha Jain because Ankit Jain is dependent upon the petitioner.

3. Another ground taken by the petitioner seeking ejectment of respondents was that they had created nuisance in the locality and have also encroached some portion and some people quarrelled with them. According to the petitioner, he has not vacated any shop after the year 1949 without any reasonable cause and that the respondents are in arrears

of rent for the period from January, 2013 onwards, which the respondents have not paid/tendered in spite of repeated requests and demands.

On these very grounds, the petitioner seeking ejectment of respondents/tenants had brought petition before Rent Controller, Ambala.

4. On getting notice, the respondents appeared and filed a joint written statement contesting the rent petition raising preliminary objections that the petitioner is guilty of suppression of material facts by not disclosing all the properties owned and possessed by him in urban area of Ambala Municipal Corporation; he has not disclosed that he is in possession of a big shop No.5368/C, Nicholson Road, Ambala Cantt. of the size of 10' x 15', the possession of which was taken by the petitioner in 2012 from its tenants Sanjeev and brothers; that shop was got vacated by the petitioner on the ground that he requires the same for bona fide use and occupation of his daughter Neha Jain; as a matter of fact, the said daughter of petitioner was married in the year 2010 and she is well settled with her husband and in-laws in Delhi; in fact, she and her husband are doing jobs in Delhi; the shop got vacated for Neha Jain is lying vacant and unoccupied; the petitioner had not disclosed various other properties owned and possessed by him in urban area of Ambala Cantt; the portion under tenancy of the respondents is part of big residential building bearing No.5368(5368-C with its sub numbers), which was got constructed as a residential building and major portion of the same is still being used for residential purposes, therefore, the petition for alleged false non-residential need cannot be got vacated and the petition is not maintainable deserving dismissal; the petition is bad for non-joinder of all the LRs of

deceased Krishan Lal, who had left behind his widow, one daughter besides respondents No.2 to 4 as his legal heirs. The respondents sought dismissal of the rent petition.

5. From the pleadings of the parties, following issues were framed:

1. Whether the respondents are liable to be ejected from the shop in dispute on the ground of personal necessity etc. as alleged? OPP.
2. Whether the petitioner is guilty of suppression of material facts? OPR.
3. Whether respondent has got any locus standi to file the petition? OPR.
4. Whether the present petition is not maintainable? OPR.
5. Whether the petition is bad for non-joinder of necessary parties? OPR.
6. Relief.

6. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

In order to prove his case, the petitioner himself got his statement recorded as PW2 besides examining his daughter-in-law Neha Jain as PW1, Vinod Walia as PW3 and his son Ankit Jain as PW4. The petitioner also tendered in evidence documents Ex.P1 to Ex.P5.

In rebuttal, respondent No.3 Parmod Bansal got his statement recorded as RW1 and the respondents further examined Gaurav as RW2. The respondents have also tendered in evidence certain documents.

7. After hearing arguments, Rent Controller, Ambala by giving

issue-wise findings vide judgment dated 16.11.2017 had dismissed the rent petition.

8. Feeling aggrieved, the petitioner-landlord had approached the Appellate Authority i.e. District Judge, Ambala by way of filing an appeal, which was assigned to Additional District Judge, Ambala – cum – Appellate Authority, Ambala, who vide judgment dated 4.8.2021 had accepted the appeal. The respondents/tenants were given two months time from the date of judgment to hand over the vacant possession of the premises under their tenancy to the petitioner/landlord, failing which, the petitioner-landlord would be at liberty to approach the competent executing Court for ejectment of respondents/tenants.

9. Now it was turn of respondents/tenants to feel aggrieved and they have come to this Court by way of filing the present revision petition, notice of which was given to the respondent/landlord, who has put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. Learned counsel for the revision petitioners has contended that the petitioner-landlord has concealed the number of other shops/properties belonging to him in Ambala Cantt. by not making specific mention in the rent petition, which he was obliged to do under law. Drawing my attention to the site plan Ex.P1, learned counsel for the revision petitioners has contended that there is another shop at point X, which is lying vacant and though as claimed by the petitioner-landlord, he had given this shop to his married daughter Neha Jain but she along with

her husband is putting up in Delhi doing job there and there is no necessity for use of this shop by Neha Jain, daughter of the petitioner-landlord and it can very well be used by son and daughter-in-law of the petitioner-landlord to expand their business of scientific equipment/material and no bona fide necessity is available to the petitioner to get the shop in possession of revision petitioners vacated, rather the petition has been filed without there being any bona fide necessity available to the petitioner-landlord.

12. On the other hand, learned counsel representing the respondent – landlord has countered the arguments contending that the petitioner-landlord has not concealed any material facts from the Court with regard to the other properties possessed by him. In para No.7 of the rent petition, it has been specifically pleaded that the petitioner had filed a rent petition against Sanjeev etc. regarding shop No.5368/C/2 and one shop has been vacated for the business of his daughter, who is running her business in that shop and in para No.8, it is pleaded that one shop was sold by the petitioner several years back before the filing of the present petition. Learned counsel for the respondent has submitted that petitioner Ashok Kumar getting his statement recorded as PW2 in his cross-examination has stated that his daughter Neha Jain is married and after the marriage, she lives in Panchkula along with her husband and children. Though he had further stated that the shop is lying vacant and is under his supervision but he self stated that Neha Jain has been visiting that spot.

13. From such replies given by petitioner in his cross-examination, it cannot be inferred that the shop is lying closed and no

business is being run from there, although it comes out that Neha Jain has not been doing business therein on regular basis. Furthermore, when the respondent No.3 Parmod Bansal got his statement recorded as RW1, he in his cross-examination recorded on 19.7.2017 had admitted it as correct that daughter of the petitioner is doing business in the shop, which was got vacated by the petitioner on the ground of personal necessity of his daughter, however, on a second thought he stated that daughter of petitioner is not doing any work but then the cat has come out of the bag. Even otherwise, it cannot be inferred that the shop which the landlord had got vacated for the purpose of doing business by his daughter is vacant and can be utilized by the son and daughter-in-law of the landlord for expanding their business. It is the specific case of the landlord that he owned a shop earlier, which he had sold of to some other person much earlier. This is so reflected in the site-plan Ex.P1 also.

14. The law is well settled that a landlord is best judge of his requirement. The portion in possession of son of the landlord, where he is said to be doing business of scientific equipment is on the rear side of the shop in question and demised shop is in possession of revision petitioners as well as shop already sold by the landlord to some other person. If son of the landlord wants to expand his business in the demised shop having direct access to the road, there is nothing wrong in his such plans. He cannot be advised to find some other place for expansion of his business and allow the revision petitioners to keep possession of the shop in dispute.

15. With regard to the other properties allegedly belonging to the

petitioner – landlord, learned Appellate Authority, Ambala in his judgment has dealt with that aspect in detail in para No.18 to 30. In para No.20, the property bearing No.2583 near Dr.Loveleen Jain Hospital, Sadar Bazar, Ambala Cantt. has been discussed contending that it was for the Respondents - tenants to establish that fact but they have failed to do so.

Similarly in para No.21, the other property No.35-D, Mahesh Nagar, Ambala Cantt. said to be belonging to petitioner – landlord as disclosed by RW2 Gaurav, Tax Clerk, M.C., Ambala (Sadar Zone), Ambala Cantt. has been dealt with. The said property in the name of wife and daughter-in-law of the landlord is of residential and non-commercial nature as is evident from copy of assessment register Ex.R1. Since in the ejectment petition, the landlord was seeking possession of a commercial property, he was not under any obligation to disclose about the other properties having nature of residential/non-commercial. Since the shop where the son of the landlord is running his business adjoins the demised shop and son of the landlord wants to expand his business, the demised shop has been found to be suitable for that purpose and the revision petitioners - tenants are nobody to advise the landlord that his son should either shift to some other place for his business or get possession of some other shop nearby.

16. Learned counsel for the revision petitioners has advanced an other argument that the shop in question forms part of a residential house and the use of the property could not have been converted from residential to non-residential without permission of the Rent Controller, therefore, the

ejection could not be sought for commercial purpose.

17. Whereas, learned counsel for the respondent has rebutted this contention stating that this objection is devoid of any force.

18. The demised property is being mentioned as shop right from the very beginning, which had been rented out to the father of the revision petitioners several years back where he had been running Halwai business and after his death his sons the revision petitioners are engaged in that avocation. As is evident from the site plan and photographs of the demised property, the same is in the form of shop so is the portion with regard to adjoining shops. There is nothing to show that those were constructed for residential purpose and were used as such at any point of time. Furthermore, the demised shop adjoins other shops and opens towards Bazar. Therefore, it comes out that it has nature of non-residential commercial property. Therefore, this objection by learned counsel for the revision petitioners lacks merit and is rejected accordingly.

19. With regard to the judgment **Shankar Lal Versus Madan Lal & Others, 2011(1) RCR(Rent) 139** referred to by learned counsel for the revision petitioners, in view of the detailed discussion above, the petitioner-landlord has been able to show that he has bona fide requirement of the demised shop to enable his son and daughter in law to expand their business. Therefore, this judgment is not helpful to the revision petitioners in any manner.

20. Similarly the other judgments i.e. **Ravinder Sood and another Versus Mohan Lal, 2013(2) RCR(Rent)91, Baljit Kumar Sharma Versus Ramesh Kumar Aggarwal and another, 2013(1) RCR(Rent) 260,**

Harbans Singh and another Versus Balwinder Singh and others, 2019(2)PLR 692, Randhir Singh Rohilla Versus Rajbir, 2015(33) RCR(Civil)112 Ram Pal Saini Versus Surinder Singh, 2016(2) RCR(Civil)655, Shri Hans Raj and Anr. Versus Balraj Singh, 1978(1) RCR(Rent) 346, Ajit Singh & Anr. Versus Jit Ram & Anr., 2008(4)RCR(Civil) 390, Rajiv Gupta Versus Jiwan Ram, 2015(1) RCR(Civil)762, Brij Bhushan and another Versus Sanjay Harjai and another, 2015(2) RCR(Civil)68, Banke Ram Versus Shrimati Sarasvati Devi, 1977(1) RCR(Rent) 595, Surjan Singh Versus Krishan Lal Garg, 1996(1) RCR(Rent) 610, Gayatri and others Versus Ashish Kumar, 2010(2)RCR(Rent) 197, Shantiprakash Shrivastava Versus Shriniwas, 1995(1) RCR(Rent) 580 and Nand Kishore Versus Yashpal Singh, 2009(3) RCR(Civil)829 referred to by learned counsel for the revision petitioners are not applicable to the present case due to different facts and circumstances and for the reason that the requirement of the petitioner-landlord has been found to be bonafide with no concealment of material facts with regard to other commercial properties belonging to him having been found to be there.

21. Learned counsel for the respondent has also referred to judgments i.e. Rameshwar Dass Gupta (since deceased) through his LRs and others Versus Gurudutt Gupta, 2023(1) RCR(Rent) 201, Balwinder Singh Walia Versus Anu Jain, 2023(1) RCR(Rent) 284, M/s Vishal Sarees and Dresses and another Versus Maninder Kaur and others, 2022(2) RCR(Rent) 543 and Shri Kuldeep Raj Gupta Versus Avtar Singh and another, 2015(2) RCR(Rent) 662 in support of his contention

that requirement of landlord is bonafide and demised shop is more suitable for expansion of business by son of the petitioner – landlord.

22. Learned counsel for the respondent has further referred to judgment **Amrik Singh and another Versus R.R. Gulati and other, 2012(1)RCR(Rent) 25** by a Single Judge of this Court wherein it was observed that availability of a commercial property in the same city would not deprive landlords of their right to get the property vacated on the ground of expansion of business in the same building.

23. Learned counsel for the respondent has further pressed into service judgment **Banwari Lal Versus Ram Parkash & Anr., 2009(2) RCR(Rent) 160** by a Single Judge of this Court wherein it was observed that a landlord can always prove the ingredients of Section 13(3) of the Act in evidence and if it is shown that no prejudice is caused to the tenant on account of non-pleading of ingredients, then such petition cannot be rejected.

24. Learned counsel for the respondent has further relied upon case **Vijay Kumar Versus Charanjit Singh and others, 2019(1) RCR(Rent)17** by a Single Judge of this Court wherein it was observed that where eviction is sought in respect of shop, the landlord is not required to disclose accommodation, which was being used for residential purpose.

25. With regard to the scope of revision, the learned counsel for the respondent has placed reliance upon judgment **Hindustan Petroleum Corporation Ltd. Versus Dilbahar Singh, 2014(4)RCR(Civil) 162** wherein it was observed that the High Court has no power to re-appreciate

evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity and propriety of the order.

26. In the present case, the order passed by Rent Controller, Ambala dismissing the rent petition filed by the landlord was obviously wrong and illegal result of inability to understand the factual position properly and to apply law in an appropriate manner. Learned Rent Controller, Ambala clearly fell in error in drawing the inference that the petitioner had failed to lead any cogent, clinching and reliable evidence to prove that he required the shop in dispute for his bona fide need, when the landlord had brought sufficient cogent and convincing evidence to prove that he had a bona fide need for the demised shop and his such need was not just a wish. There was nothing to show that the petition had been filed by the petitioner/landlord with a mala fide intention to enhance the rent or some other extraneous consideration. Even otherwise under Section 13(6) of Haryana Urban (Control of Rent and Eviction) Act, 1973, if the landlord rent out the shop to some other person after getting it vacated within a period of three years, then the tenant has got a right to approach the Rent Controller for restoration. Therefore, the Legislature has provided a proper safeguard against ejectments for extraneous reasons.

27. On the other hand, the judgment delivered by Appellate Authority, Ambala is very balanced showing due application of mind and the same is result of proper appreciation and factual position and correct and in-depth analysis of evidence along with due application of law.

28. Learned Appellate Authority, Ambala was fully justified in setting aside the order passed by Rent Controller, Ambala, which suffered from illegalities and infirmities and allowing the ejectment petition.

29. The impugned order passed by the Appellate Authority, Ambala is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

30. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

1.6.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No