

*Before Gurvinder Singh Gill, J.*

**S.KAPOOR INDUSTRIES AND OTHERS—** *Petitioners*

*versus*

**MOHAN SINGH—** *Respondent*

**CR No. 2136 of 2017**

June 1, 2018

**A. East Punjab Urban Rent Restriction Act, 1949—S.13—Bonafide necessity—Eviction—Age—Age itself no bar for landlord to seek ejectment of non-residential building on ground of personal necessity—In absence of any evidence regarding any kind of infirmity in physical state—Ability of landlord in handling business not to be doubted.**

*Held*, that in the absence of any evidence regarding any kind of infirmity in physical state of the landlord and also in view of the observations of the Court to the effect that the landlord is quite agile and fit, his ability to effectively handle business cannot be doubted merely on the score that he is aged 75 years.

(Para 11)

**B. Punjab Urban Rent Restriction Act, 1949—S.13— Bonafide necessity—Eviction—Landlord owned large number of properties— Landlord carried on business of manufacturing parts of cycle in a adjoining building—Landlord already sold share in building— Landlord has experience in business—No infirmity in findings of bonafide necessity by courts below warranting interference.**

*Held*, that a perusal of the aforesaid extract shows that the landlord has himself come out with details of three of his properties and has also explained as regards their status and suitability. While in the witness box, the landlord AW-1 Mohan Singh has stated identically in his examination-in-chief. He has categorically stated that the demised premises are situated in the main market of cycle spare parts and there are number of such shops around the demised premises and that he intends to start cycle spare parts trading business. During cross-examination, while he had stated that when he purchased the property in dispute from Mohinder Singh, he was not carrying any business but before purchasing the property, he was carrying on business of manufacturing of cycle spare parts in the adjoining building, which was in his joint ownership with his brother. He further stated that he had

already sold his share in the said building. He has further stated that he had let out one room in property bearing No.747 with effect from 1.8.2011 and that one room was lying vacant regarding which negotiations are going on for letting out the same and that there are four shops on the ground floor of the said property. However, he explained that the said property is situated far away from the cycle spare parts market in his examination-in-chief and no question regarding the said distance from the cycle spare parts market has been put to him during his cross-examination. During cross-examination, he has admitted that he had been leading a retired life since the last 20 years. He has also very candidly admitted that as and when any portion of property bearing No. 747 is vacated by a tenant, he lets out the same if he find a suitable tenant and that he is submitting income-tax returns. He also admitted that at present he is getting Rs.1.25 lacs as annual rent.

(Para 15)

Sanjiv Gupta, Advocate for Vaibhav Sehgal, Advocate *for the petitioners*.

Sourabh Goel, Advocate for the respondent.

### **GURVINDER SINGH GILL, J.**

(1) The petitioners-tenants (hereinafter referred to as “*the tenant*”) have filed this petition challenging judgment dated 15.2.2017 passed by the learned Appellate Authority, Ludhiana, whereby an order of ejection passed by the learned Rent Controller, Ludhiana in favour of the respondent-landlord (hereinafter referred to as “*the landlord*”), has been affirmed.

(2) The case set up by the landlord, as per his petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “*the Act*”) is that he is owner and landlord of property bearing No.B-16, 542/2/677, Mohalla Gobind Pura, Gill Road, Ludhiana, which had been purchased by him from Mohinder Singh vide sale-deed dated 10.4.1996 and that shop bearing Nos.3, 4 and 5 of the said property are occupied by the tenant on rent @ Rs.400/- per month along with house-tax. The landlord, apart from asserting that the tenant was in arrears of rent, also set up a case of “*bona fide personal necessity*” averring therein that he intends to use the premises in question to run a cycle spare parts trading business, as the said shops are situated in the main market of cycle spare parts, where similar businesses are being run from several other shops. The landlord asserted that he owns building No.B-21-1870,

Street No.1, Janta Nagar, Ludhiana, which is 3 kilometers away from the demised premises and is not suitable for running the aforesaid business and that he owns another property bearing No.B-22- 747, Street No.3, Dashmesh Nagar, Ludhiana, which is entirely in possession of tenants and is also not suitable for such a business being situated quite away from the main market of cycle spare parts. It was further stated that the landlord owns another property bearing No.B-21-3502 in Street No.6, ATI Road, New Janta Nagar, Ludhiana but the same is in the nature of a residential property, where he is putting up with his family. The landlord further stated that he is not occupying any other non-residential building in the urban area except property bearing No.B-21-1870, Street No.1, Janta Nagar, Ludhiana which is not suitable for running cycle spare parts business and that he has not vacated any such non-residential property in the urban area of Ludhiana.

(3) The tenant resisted the ejectment petition and filed reply stating therein that two previous ejectment petitions on grounds of non-payment of rent had been dismissed, which indicates that the landlord keeps on filing such petitions simply to harass the tenant and that the present petition was barred by principle of res judicata. The tenant denied the averments of the landlord regarding his personal necessity and asserted that in fact the landlord has various buildings in Ludhiana and is having huge earnings from a 'Mandir' as well as from rentals and that since he is aged 75 years, therefore, the assertion that he is to start business now, is not believable. The tenant further asserted that the petitioner own another non-residential building and a big building bearing No.B-24-1870 in Janta Nagar, Ludhiana. The tenant, while denying all other material averments of the ejectment application, prayed for dismissal of the same.

(4) The landlord filed replication denying therein the stand taken by the tenant in his written statement, while reiterating the averments made in the ejectment application. The parties were put to proof on the following issues:-

- “1. Whether the petitioner is entitled to ejectment of the respondent (respondents) from the suit property as prayed for? OPP.
2. Whether respondent (respondents) is (are) in arrears of rent w.e.f. 1.1.2009? OPP
3. Whether petitioner requires the demised premises

bonafidely for their own use and occupation? OPP

4. Whether the petition is not maintainable as the petitioner has not come to the Court with clean hands? OPR

5. Whether petitioner is bad under the provisions of constructive res-judicata? OPR

6. Relief.”

(5) The landlord, in order to substantiate his case, himself stepped into witness box as PW-1 and closed his evidence. On the other hand, the tenant examined RW-1 Madan Lal and RW-2 Ashok Kapoor to rebut the case of the landlord.

(6) The learned Rent Controller, Ludhiana upon appreciating the evidence on record held that the tenant was not in arrears of rent. However, the tenant was ordered to be ejected from the premises in question on the ground of “*bona fide personal necessity*” of the landlord vide order dated 3.10.2015. The tenant challenged the same by way of filing an appeal but the same was dismissed by the learned Appellate Authority, Ludhiana, vide judgment dated 15.2.2017 which has been challenged in the present revision petition.

(7) The learned counsel for the petitioner, while assailing the impugned judgment, has submitted that it is highly unlikely that the landlord, who is having sufficient rental income and is aged 75 years, would start a business at this advanced age. It has been submitted that the sole purpose of projecting the “personal necessity” is to get the premises vacated, so as to rent out the same to some other tenant at a higher rate of rent.

(8) I have considered the aforesaid submissions.

(9) It is not disputed that the landlord is aged about 75 years but age by itself cannot be a bar for a landlord to seek ejection of non-residential building on ground of “*personal necessity*”. There is nothing on record to show that the landlord is infirm or is not keeping good health so as to render him unable to carry on any business. Rather the learned Rent Controller has recorded its observations regarding the state of health of the landlord in the judgment as follows:

“This person has regularly been appearing in this court before me. He apparently is quite agile. Otherwise also there is nothing on file which might reflect that he has any physical incapacity due to his such age which might restrain

him from starting such cycle spare parts business. He already has a certificate Ex.P6. He also has been running this business in the adjoining building earlier.”

(10) Though RW-1 Madan Lal, a witness of the tenant denied that age is no bar for carrying on business but it will not be out of place to mention that he disclosed his own age as 63 years and stated that he himself is looking after his entire business. Interestingly, when he was asked question about age of the then Prime Minister Dr. Manmohan Singh he stated that he might be aged about 70 years and that the President Ms. Pratibha Patil would also be around 70 years of age and that the Chief Minister of Punjab Shri Parkash Singh Badal is aged about 80 years.

(11) Thus, in the absence of any evidence regarding any kind of infirmity in physical state of the landlord and also in view of the observations of the Court to the effect that the landlord is quite agile and fit, his ability to effectively handle business can not be doubted merely on the score that he is aged 75 years. This Court in its decision rendered in *Sikander Lal versus Mehar Singh and others*<sup>1</sup> has held that the age of the landlord is no bar for starting any business and that the Court cannot impose its own opinion regarding the competence of ability of the landlord to effectively run a business.

(12) In view of the aforesaid discussion, the submission raised on behalf of the tenant as regards the advanced age of the landlord, cannot be accepted.

(13) It has next been submitted by learned counsel for the petitioner-tenant that the landlord has not come to the Court with clean hands and that he owns large number of other properties, which are equally suitable and that in fact the landlord had also sold a property, which virtually negates his assertions. Reliance has been placed upon *Pritam Singh Bakshi versus Mrs. Sukhdev Kaur and others*<sup>2</sup>, *Jaswinder Singh versus Krishan Lal*<sup>3</sup>, *Brij Bhushan and another versus Sanjay Harjai and another*<sup>4</sup>, *Ram Pal Saini versus Surinder Singh*, Vol. CLXXXI-(2016-1) PLR 722 and *Randhir Singh Rohilla versus Rajbir*<sup>5</sup>.

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<sup>1</sup> 2014(2) RCR (Civil) 948

<sup>2</sup> 2014(1) RCR (Rent) 338

<sup>3</sup> 2017(1) Law Herald (P&H) 690

<sup>4</sup> 2017(1) Law Herald (P&H) 690

<sup>5</sup> 2015(3) Law Herald (P&H) 2711

(14) To test the aforesaid submissions, it is apposite to first of all refer to the pleadings made by the landlord in ejectment petition. The relevant extract from the ejectment petition reads as under:-

“.....The petitioner owns building No.B-21 1870, Janta Nagar, Street No.1, Ludhiana which is at a distance of 3 kilometers from the shop in suit and is far away from the market and is not suitable for cycle spare parts trading business. The petitioner is also owner of property No.B-22 747, Street No.3, Dashmesh Nagar, Ludhiana. The entire building is in possession of tenants and is also not suitable for Cycle Spare Parts Trading Business and is situated at a far away place from the cycle spare parts market. The property No.B-21 3502, situated in Street No.6, A.T.I. Road, New Janta Nagar, Ludhiana is residential building of the petitioner”

(15) A perusal of the aforesaid extract shows that the landlord has himself come out with details of three of his properties and has also explained as regards their status and suitability. While in the witness box, the landlord AW-1 Mohan Singh has stated identically in his examination-in-chief. He has categorically stated that the demised premises are situated in the main market of cycle spare parts and there are number of such shops around the demised premises and that he intends to start cycle spare parts trading business. During cross-examination, while he had stated that when he purchased the property in dispute from Mohinder Singh, he was not carrying any business but before purchasing the property, he was carrying on business of manufacturing of cycle spare parts in the adjoining building, which was in his joint ownership with his brother. He further stated that he had already sold his share in the said building. He has further stated that he had let out one room in property bearing No.747 with effect from 1.8.2011 and that one room was lying vacant regarding which negotiations are going on for letting out the same and that there are four shops on the ground floor of the said property. However, he explained that the said property is situated far away from the cycle spare parts market in his examination-in-chief and no question regarding the said distance from the cycle spare parts market has been put to him during his cross-examination. During cross-examination, he has admitted that he had been leading a retired life since the last 20 years. He has also very candidly admitted that as and when any portion of property bearing No.747 is vacated by a tenant, he lets out the same if he find a

suitable tenant and that he is submitting income-tax returns. He also admitted that at present he is getting Rs.1.25 lacs as annual rent.

(16) On the other hand, RW-1 Madan Lal, a witness of the petitioner-tenant, during his cross-examination, stated that landlord owned a property bearing No.3502, New Janta Nagar, Ludhiana and that he had seen the said property, which is about 1000 sq. yards and that in one part of the said property, the landlord is residing with his family and that there is a “Mandir” in the remaining portion. As regards property bearing No.1870, Janta Nagar, Ludhiana, he admitted that the same is at a distance of about 2.5 to 3 kilometers from the property in dispute.

(17) While examining the aforesaid statements, it is borne out that the landlord has not concealed any material fact regarding the ownership and possession of his properties. On the other hand, the witness of the tenant i.e RW-1 Madan Lal has virtually admitted a substantial part of the assertions of the landlord as regards the status of his properties as has been stated in the ejection application. It is admitted by RW-1 that properties no. 1870 is situated about 3 kilometers away from the demised premises. Property no. 3502 is admitted to be a residential building. Property no. 747 is stated to be in possession of the tenants.

(18) Admittedly, the tenant himself is also carrying on the cycle spare parts business in the demised premises, which is a cycle spare parts market. The landlord, though aged 75 years, does have experience of business, having been into the business of cycle spare parts manufacturing earlier. During cross-examination of RW-1 Madan Lal, he has admitted that the landlord used to do business about 20 years back and he was carrying on business of cycle spare parts. The respondent-landlord does not suffer from any infirmity and as per the observations of the Rent Controller was fairly agile and had been appearing in the Court on everyday. The fact that the landlord is well off cannot lead to an inference that he would not start any business to further supplement his income.

(19) In these circumstances, the assertion of the landlord regarding his requirement of the premises for starting a business of cycle spare parts trading cannot be doubted and discarded simply by labeling it as a mere wish or a desire.

(20) As regards the judgments relied upon by the petitioner-tenant, a perusal of judgment in *Pritam Singh Bakshi's case* (*supra*)

shows that the same mainly pertains to the ingredients of the pleadings to the effect that a tenant is expected to plead in accordance with the provisions of sub-clause (b) and (c) of Section 13(3)(a)(i) of the Act. In the present case, the landlord has stated in detail in respect of his properties, so as to comply with mandatory provisions. In any case, Honourable the Supreme Court in *Syed Dastagir versus T.R. Gopalakrishana Setty*<sup>6</sup> held that in construing a plea in any pleadings, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place facts and law of one's case for a relief and that such an expression may be pointed, precise and some time vague but still it could be gathered what he wants to convey by reading the whole pleading. In the present case, the landlord has disclosed elaborately about his properties and their status and which is sufficient compliance as regards requirements of pleading.

(21) In *Jaswinder Singh's case (supra)*, the landlord had let out an adjoining shop, which had weighed with the Court for holding that the plea of *bona fide* necessity was not a *bona fide* plea. As regards *Brij Bhushan's case (supra)*, a perusal of the same shows that the facts were different inasmuch as a plea had been taken by the tenant to the effect that one of the shop was lying vacant which was not controverted by way of filing replication. In *Ram Pal Saini's case (supra)*, one of the shops adjacent to demised premises was found to be vacant, which was being used a garage and that too for parking car of the landlord's son, whenever he used to come on vacation to reside with the landlord. It was under these circumstances that it was held that the landlord was in possession of an adjacent shop within the same locality, thus dis-entitling him to seek ejection of his tenant. Thus, in view of distinct factual position, the cited aforesaid judgements would not advance the case of petitioner.

(22) As regards judgment in *Randhir Singh Rohilla's case (supra)*, a perusal of the same shows that it has been held that in a case based on personal necessity if the landlord does not make disclosure of all the properties, which he owns and during cross-examination the existence of some other properties is brought about, the eviction petition is liable to be dismissed on account of concealment of such information. There is no dispute to the aforesaid proposition of law. However, in the present case, the same would not be applicable inasmuch as the landlord has come out fairly with details of the properties owned by him.

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<sup>6</sup> AIR 1999 (S.C.) 3029



(23) In view of the discussion made above, I do not find any infirmity in the findings of “*bona fide personal necessity*” as recorded by the Courts below so as to warrant any interference in the same.

(24) As regards the pleas of constructive res judicata, the same by no stretch of imagination can be accepted because Section 13 of the Act lays down several grounds on which the landlord may seek ejection of his tenant. All these grounds are distinct from each other and a landlord is fully competent to bring about a fresh ejection application on any of these grounds whenever such ground is available to him.

(25) Hon'ble the Supreme Court in *Hindustan Petroleum Corporation Ltd. versus Dilbahar Singh*<sup>7</sup> has held that the High Court while exercising revisional powers does not sit as a Court of appeal and even if two views are possible, the Court is not to interfere unless and until the findings are shown to be absolutely perverse and not appealing to the judicious mind. Relevant extract from the aforesaid cited judgment reads as follows:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappraisal of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or

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<sup>7</sup> 2014(3) Law Herald (SC) 2488

propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

(26) Finding no infirmity in the concurrent findings as recorded by the Courts below as regards '*bona fide* personal necessity' of the landlord, no ground is made out to interfere in the impugned judgement. Consequently, the revision petition is dismissed.

(27) The petitioner is, however, granted time till 31.12.2018 to hand over vacant physical possession of the demised premises to the landlord subject to the condition that all the arrears of rent/mesne profits are duly paid and he continues paying the rent/mesne profits regularly in future and also subject to the condition that he furnishes an undertaking to this effect before the Rent Controller within a period of three weeks from today.

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*P.S. Bajwa*