
(2014) 12 P&H CK 0166
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 8156 of 2014

Brij Bhushan and Others

APPELLANT

Vs

Sanjay Harjai and Others

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13(3)(a)(i), 13(3)(a)(ii)(a), 13(3)(a)(iv)(a), 21, 21(1)(h)

Citation : (2015) 2 RCR(Civil) 68 : (2015) 1 RCR(Rent) 249

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : R.K. Chugh, Advocates for the Appellant

Judgement

Gurmeet Singh Sandhawalia, J.—The challenge in the present revision petition filed by the petitioners-landlords is to the order dated 6.1.2011 passed by the Rent Controller, Yamuna Nagar at Jagadhri whereby the ejectment application has been dismissed. Challenge has also laid to the order dated 3.3.2014 whereby the appeal has also been dismissed by the Appellate Authority, Yamuna Nagar. The application for ejectment was filed by the respondents from shop forming part of the property bearing number B-II/91 description of which was given in the heading of ejectment application. The case of the petitioners is that they had purchased the shop from one Mukesh and others and the shop in question was given on rent at the rate of Rs. 7250/- per month. The relationship was pleaded of landlords-tenants on account of purchase of the shop and ejectment was sought on the ground that it was become unfit and unsafe of human habitation as the building was constructed 75 years ago. Personal requirement of Ashu Singla son of petitioner No. 1-Brij Bhushan was pleaded on the ground that he was an unemployed graduate and not gainfully employed and wanted to start his own business after reconstruction of the shop. The arrears were also claimed from 25.10.2007 till filing of the petition i.e. 3.11.2008 along with house tax and interest etc. It was further pleaded that the petitioners wanted to construct the

whole building for construction of a shopping complex. The respondents-tenants were alleged to have three of their own shops bearing shops No. B-1-1327, B-1-1293 and B-II-92-A near shop in question but they are not vacating the shop to harass the petitioners-landlords.

2. In the written statement filed, the relationship of landlords-tenants was denied and sale deeds were alleged to be sham transactions. The rent alleged was Rs. 325/- per month including the house tax. It was alleged that shop in question along with other three adjoining shops were part of building constructed over part of plot measuring 57 sq. yards which was previously owned by Pandit Lahori Ram Sharma who had let out to the tenants. It was denied that the shop was unfit and unsafe for human habitation and was only 45 years old. Mukesh Kumar had demolished a portion built on the roof of all the four shops and suit for permanent injunction had been filed restraining him from demolishing upper portion of the building which was pending. The property had been purchased after filing the suit for permanent injunction and Malba had been stacked illegally on the roof of the shop since January, 2008 and the petitioners in collusion with the said Mukesh Kumar were illegally trying to use force to make the structure of the shop weak. It was denied that there was need for the personal use and occupation of the shop in question and the petitioners were running business of finance and property dealing under various names and partnership of the property dealers. The petitioners had purchased shops bearing municipal number B-2/85/S/1 along with property bearing No. B-1/87/A/2 from one Smt. Ritu Arora. The property was having 6-7 shops adjoining to the shop in question and petitioners had also purchased share in all of the building and there was already one shop lying vacant in the alleged building and area measuring 400 sq. yards was lying vacant behind the shop. Petitioner No. 1 had filed three suits for ejectment on the ground of need of personal necessity for his son namely Ashu and he had only 1/4th share in whole of the building. He was permanent resident of Panchkula and his family members were also residing there and carrying on their business and even the petitioner No. 2 was also residing at Panchkula. In fact they engaged in the business of property and wanted to sell the same after getting the same vacated from the tenants for profit.

3. The rent had been tendered upto date by way of money order and Mukesh Kumar had been receiving rent along with house tax etc. at the rate of Rs. 325/- per month. The answering respondents had not atoned his tenancy in favour of the petitioners and there was no notice of the alleged transfer in their favour. Accordingly, the petitioners were not entitled for ejectment and neither they had any right to raise any construction of the shopping complex. It was specifically alleged that property bearing No. B-I/1327, Railway Station Road, Yamuna Nagar was owned by Sunil Kumar and 112 portion was owned by Sanjay Kumar. The property bearing No. B-I/1293 was in the name of Ramesh Chand father of respondent No. 1 and father-in-law of respondent No. 2 and had fallen to the share of Sanjay Kumar including property bearing No. B-2/92/A. The shop in dispute was being run by the respondents.

4. The Rent Controller, Yamuna Nagar at Jagadhri framed the following issues:--

"1. Whether there is relationship of landlord and tenant between the petitioner and the respondent? OPP

2. Whether the respondents are liable to be ejected on the ground that shop in question has become unsafe and unfit for human habitation? OPR

3. Whether the respondents are liable to be ejected on the ground that the shop in dispute is required by the petitioner for the bonafide personal use and necessity? OPP

4. Whether the respondents are liable to be ejected on the ground of non payment of rent? OPP

5. Whether the petitioners are estopped from filing the present petition by their own act and conduct? OPR

6. Whether the petitioners have suppressed the material facts from the Court and have not come to the Court with clean hands? OPR

7. Whether the sale deeds dated 13.8.08 in favour of the petitioners are sham transactions? OPR

8. Reliefs."

5. The petitioners examined as many as four witnesses including petitioner No. 1 himself as PW-1 and one Building Expert as PW-4 and closed their evidence. The respondents on the other hand examined as many as three witnesses and also placed on record report of the Local Commissioner.

6. The Rent Controller, Yamuna Nagar at Jagadhri came to the conclusion that the petitioners being co-sharer in the shop in dispute were clearly entitled to file and maintain the present petition and they were entitled to file and maintain the ejectment petition. The tenants had no locus standi to question the legality of the sale deeds and there was relationship of landlord and tenant between the parties. The filing of the petition was held to be sufficient notice to the respondents regarding purchase of shop. The rate of rent was held to be Rs. 325/- per month as had been provisionally assessed earlier and on account of payment the ground of ejectment for non payment no longer survived.

7. On the issue of the shop being unsafe and unfit for human habitation, the matter was decided against the petitioners. The seepage and damage was caused on account of keeping the malba stacked on the roof and the issue was decided against them that the shop had not become unsafe and unfit for human habitation. On the ground of bonafide use and necessity under issue No. 3, it was held that petitioner No. 1 was entitled to file ejectment petition for bonafide personal necessity of his own but the mandatory provisions of Section 13(3)(a)(i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as "the Act") had not been pleaded regarding the occupation of other

buildings and the vacation without any sufficient cause after the commencement of the Act. It was noticed that specific averments had been in the written statement made that petitioners were owners and in occupation of the other shops and no replication had been filed controverting the said fact. The argument of the landlords that they could still lead evidence to prove the existence of ingredients of the Act and no prejudice would result to the tenants was rejected by placing reliance upon the judgment of the Apex Court in *Anup Gupta Vs. State of Punjab*, .

8. The fact that there was categorical averment regarding the petitioners having purchased shops bearing No. B-2/85/S/1 and B-1/87/A/2 from Smt. Ritu Arora which were 6-7 shops adjoining the shop in question weighed with the Rent Controller who noticed that even replication had not been filed. While deposing petitioner No. 1 had not mentioned about the occupation of any other building in the urban area concerned nor vacating the same. It was noticed that since the necessity was for Ashu Singla, son of petitioner No. 1, neither this fact had been pleaded nor Ashu Singla had come forth to depose though he was present when Brij Bhushan was cross-examined. Thus, the bonafide requirement was doubted. It was noticed that a variant stand had been taken that a shopping complex has to be raised. Therefore, the plea taken by the tenants that one shop in the same building bearing No. B-II/91 was lying vacant would go on to show that there was material variance and a mere desire and whim on the part of the landlords would not come under the ambit of the term of bonafide requirement. The argument raised that the tenants were in possession of alternative accommodation was also rejected. It being not the case of the petitioners that there was any subletting or the respondents having ceased to occupy, accordingly, the petition was dismissed.

9. The Appellate Authority, Yamuna Nagar also dismissed the appeal by placing reliance upon Ajit Singh's case (*supra*) and full Bench of this Court in *Banke Ram Vs. Smt. Sarasti Devi*, by holding that once the statutory requirement had not been pleaded and neither the son had been produced in the witness box, the landlords could not succeed.

10. Counsel for the petitioners has vehemently tried to argue that no prejudice would have been caused on account of non pleading and therefore, the authorities below were not justified in rejecting the ejectment application. It was submitted that there is nothing on record to show that the petitioners were owners of any other shop in the form of sale deed or such document and therefore once it has not been specifically objected to in the written statement that the mandatory requirement had not been pleaded, the Courts below were in error in throwing out the petition. Reliance has been placed upon the judgment of this Court in *Sat Parkash Chaudhary Vs. Kewal Krishan Malhotra*, to submit that flaw was not fatal and the pleadings had to be considered broadly and if tenant does not taken objection, it would not be fatal to the case.

11. The said judgment in no way helps the petitioners since it was a tenant's

petition and the tenant had failed to take objections in the reply and in such circumstances the observation had come from this Court. The law laid down by the Apex Court in Ajit Singh's case (supra) specifically holds that where the requirement is for the son then the pleading has to be to the effect that he is not occupant of any other building nor vacated any such building. Relevant observations read as under:--

"13. Applying the principles as laid down by the aforesaid decision namely, Joginder Pal (Supra) which also deals with commercial premises, as in the present case, we are of the view that a plain reading of Section 13(3)(a)(ii)(a) to (c) in conjunction with Section 13(3)(a)(iv)(a) & (b) of the Rent Act, would make it ample clear when the said shop is being got vacated on the ground of user for the son of the landlord, then in the eviction petition, the son (appellant No. 1) must plead that he was not occupying any other building and that he had not vacated such a building without sufficient cause. It is well settled that while interpreting a provision of a statute, the same has to be interpreted taking into consideration the other provisions of the same statute. In the aforesaid decision, namely, Joginder Pal (Supra), this Court has clearly laid down that a balanced interpretation has to be given in regard to the rent legislation and the provisions itself contemplate a case in regard to user of nonresidential building by a professional and the statute itself lays down requirement in that regard within the same requirements will have to be read in regard to shop required to be used by the son of the landlord for business purpose. Accordingly, we are of the view that the impugned decision of the High Court is in direct conflict with the Judgment of this Court in Joginder Singh's case (supra) and therefore, the said Judgment cannot be sustained."

12. As noticed in the present case a specific plea was taken by the tenants that the petitioners are owners of two shops bearing Nos. B-2/85/S/1 and B-1/87/A/2 and the property was 6-7 shops adjoining the shop in question and that there was also one shop lying vacant in the building. In such circumstances, it was incumbent upon the petitioners who have been put to notice to file replication to controvert the allegations they wanted to take the benefit of the observations of the Full Bench in Banke Ram's case (supra). This Court in Shankar Lal Vs. Madan Lal and Others, specifically held that where the landlord is guilty of concealment, the petition is liable to be dismissed. As noticed above, Ashu Singla for whom the requirement of personal necessity was pleaded never stepped into witness box to face the test of cross-examination as to whether he was in possession of any other property. In such circumstances, the Court below was well justified in dismissing the ejectment petition.

13. It is settled principle that the requirement of the landlord should be bonafide and just a mere wish or desire would not be a ground to direct ejectment. Reliance can be placed upon the judgment of the Apex Court in Sri Kempaiah Vs. Lingaiah and Others, . The relevant paragraph reads as under:--

"8. Though it was pleaded that the appellant was under compulsion to vacate the

premises under his occupation as his landlord was insisting to vacate the same, yet no evidence was led in that behalf. It may have been a wish or desire of the appellant to occupy the leased premises but he failed to prove the reasonable bonafide requirement as contemplated under Section 21(1)(h) of the Act. The word "require" used in clause (h) of sub-clause (1) of Section 21 of the Act implies something more than a mere wish or impulse or desire on the part of the landlord. Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in the insistence of the need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". The ground mentioned in clause (h) of Sub-section (1) of Section 21 of the Act emphasises to the genuineness of the requirement of the landlord. The term "reasonable and bonafide requirement" are complementary and supplementary to each other in the context. Dealing with a similar provision under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court in *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde* - held that when the Legislature employed the two terms together the message to be gathered is that requirement must be really genuine from any reasonable standard. Where eviction is sought on the aforesaid ground, a duty is cast upon the court to satisfy itself with the alleged requirement of the landlord. Even in a case where the tenant does not contest or dispute the claim of the landlord and the tenancy is governed by the Rent Control legislation, the court is obliged to look into the claim independently and give a specific finding in that regard."

14. Even otherwise in view of the concurrent findings recorded by both the Courts below and keeping in view the judgment of the constitutional Bench in *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh*, - this Court is not to interfere with the findings of fact. The relevant observations read as under:--

"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 reappreciation 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 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 reappreciate 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."

15. Accordingly, keeping in view the above principles, this Court is of the opinion that the impugned orders do not warrant interference under Article 227 of the Constitution of India. Accordingly, the present revision petition is dismissed.