

(2003) 07 P&H CK 0127
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2479 of 2003

British Motor Car Company Pvt. Ltd.

APPELLANT

Vs

Sewak Sabha Charitable Trust (Regd.)

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2003) 135 PLR 195 : (2003) 2 RCR(Rent) 606

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; Ashok Aggarwal and Alok Jain, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The respondent-landlord has filed an ejectment petition against the petitioner-tenant in September, 1991 to seek his ejectment in-teralia on account of non-payment of rent and cease to occupy etc. However, the landlord amended the ejectment petition in July, 1998 to seek the eviction of the tenant on the ground that the landlord requires the premises for his own use and occupation. It was pleaded that, the present premises in occupation of the landlord are insufficient for accommodating the doctors, in-door patients, laboratories, other staff members and the building in question is required by the petitioner for its hospital. The number of indoor and outdoor patients is about 500 per day and the present building in its possession is most insufficient. The landlord also pleaded that it has not vacated any premises after the enactment of East Punjab Urban Rent Restriction Act, 1949. The landlord sought amendment of the petition after the Hon''ble Supreme Court set aside the amendment in the East Punjab Urban Rent Restriction Act, whereby the right to evict the tenant from non-residential building on account of bona fide personal use and occupation in an judgment reported as Harbilas Rai Bansal Vs. State of Punjab and another, . Following the said judgment provisions of Haryana Urban (Control

of Rent Act and Eviction) Act, 1973 were held to be discriminatory by Division Bench of this court so as to deny the eviction of the tenant from a non-residential building on account of bona fide personal use and occupation, in a judgment reported as State of Haryana Vs. Ved Parkash Gupta and Another, .

2. At the out set, the learned counsel for the petitioner has raised an argument that such judgment of the Division Bench does not lay down correct law. In Harbilas Rai Bonsai's case (supra) the Supreme Court has struck down the provisions of Amending Act whereas, the Haryana Urban (Control of Rent & Eviction) Act was introduced in the year 1973. The Legislature has provided separate grounds of eviction in respect of different category of building. The classification of the building whether residential or non-residential is well defined and cannot be said that it is unintelligible classification. This aspect has not been considered to the Division Bench. However, I am unable to agree with the argument raised by the learned counsel for the petitioner. The Division Bench has considered the entire provisions of the Act and returned the finding of denial of right of eviction to the landlord from a non-residential building as discriminator)" and therefore, struck, down being violative of Article 14 of the Constitution of India.

3. On merits, the learned counsel for the petitioner has contended that the order of ejectment passed by both the courts below is patently illegal, unjust and not sustainable in law and on the fact. That the landlord is required to plead and prove three essential ingredients to seek eviction of the tenant on the ground of bona fide personal use and occupation. Such ingredients are (i) that he requires the premises for his own occupation; (ii) that he is not occupying any other building in the urban area concerned: (iii) that he has not vacated such a building without sufficient cause after the commencement of 1949 Act in the said area. Reliance was placed on Full Bench Judgment of this Court reported as Banke Ram v. Smt. Sarasti Devi (1977)79 P.L.R. 112 as well as Onkar Nath v. Ved Vyas 1979(2) R.L.R. 226 (Supreme Court) and Chiranjit Rai Alipuria v. Madhuban Singh and Ors.1984(2) RCR 343.

4. A perusal of the pleadings would show that the landlord has pleaded that the premises are required for its personal use and occupation and that the premises in occupation of the landlord are most insufficient for accommodation and that it has not vacated any premises after the enactment of East Punjab Urban Rent Restriction Act.

5. Bishan Sarup is a trustee of the landlord. He has appeared as PW5. He has stated that the place available with the landlord was insufficient. There were 13 doctors, 40-50 staff nurses and 15-20 peons and sweepers in the hospital. About 500 persons visit OPD of the hospital everyday. Photographs Ex.P.8 to P. 18 depict the various departments in the hospital. The learned Rent Controller has visited the premises on 11.9.1999 and found that the landlord is running a Charitable Hospital and number of patients were admitted in the hospital. Some of doctors are residing on the top floor of the building. Therefore, the landlord

has pleaded and proved the first ingredient that it requires the premises for their own use and occupation. The requirement of additional accommodation to carry out the objectives of the Charitable Hospital to provide health services cannot be said to be fanciful, imaginary or a case of mere wish.

6. The argument that the ingredient that the landlord is not occupying any other building in the urban area concerned is not pleaded or proved. A perusal of the ejectment petition shows that the landlord has pleaded that he is in possession of a building which is insufficient for his requirement. The requirement that the landlord is not occupying another building is to be read in the context of each case. The landlord has sought ejectment of the tenant on the ground that though the landlord is in occupation of a building where a Charitable Hospital is being run but still it wants additional accommodation. The landlord has clearly set up a case that the building which the landlord is occupying is not sufficient for their use. The statutory requirements have to be interpreted keeping in view the objective of statutory provisions. Therefore, the landlord has proved that the landlord is not occupying any other suitable building in the urban area from where the additional Hospital activities can be carried.

7. The learned counsel for the petitioner argued that many shops had fallen vacant after the filing of the eviction petition in the year 1991 which have been let out again by the landlord and thus, one of the essential ingredients that the landlord has not vacated the premises without any sufficient reason is not proved. It has been found by the courts below that some of the tenants have vacated the shops and such shops have been let out again. It has been found that size of such shops is not more than 10 x 10 and all the shops were let out prior to the amendment of petition to seek ejectment on the ground of personal requirement which became available only in the year 1998.

8. Still further it has been pointed out that the rental income of the shop is realised for running of the Charitable Hospital as even with the rental income, the landlord is in losses which is proved from the Income Tax returns Ex.R.1 to Ex.R.10. The amount deposited in the fixed deposits is on account of pension scheme applicable in the establishment of the landlord as such the amount is required to be kept in a fixed deposit for pension scheme. In view thereof, the third ingredient is also pleaded and proved. There was sufficient cause with the landlord to let out small area vacated by the tenants prior to right of eviction arose to it. The learned counsel for the petition has also relied upon *Ram Narain Arora v. Asha Rani and Ors.* J.T. 1998 S.C. 181 to contend that the landlord has other reasonable suitable accommodation, therefore, the landlord does not require the suit premises and his requirement is not bona fide. However, the said judgment has no application to the facts of the present case. It has been found that the landlord is running a Charitable Hospital in part of the building. The landlord has 13 doctors, 15-20 nurses and other staff of peons and sweepers. The petitioner is in occupation of substantial area of that building. Therefore, availability of such area is a necessity for the landlord to carry out the Charitable

purposes of the Trust.

9. As per the site plans produced on record the total area which is in possession of the tenant is stated to be more than 3500 sq. feet. The landlord is running a Charitable Hospital. The landlord wants to increase the facilities. The shop portion which has fallen vacant was firstly prior to right of ejectment on account of bona fide personal use become available to the landlord and secondly such small portion has been let out only for the ancillary purpose i.e. medicines shops. Still further such small area cannot be used by the landlord to expand hospital activities such as additional OPD, X-rays, Lab etc. which require much larger area.

10. Thus, the plea that the landlord has failed to plead necessary ingredients is without any substance. Both the parties have led extensive evidence regarding the requirement of the premises. Parties have understood the case of personal necessity very well. It has been held by Hon'ble Supreme Court in *Baba Kashinath Bhinge v. Samast Lin-gayat Gavali and Ors.* 1995 H.R.R. 131 that where the parties properly understood each other case and necessary evidence was adduced, technical ground of omission to plead requirement in specific terms cannot be a ground of non-suiting the landlord Trust on technicalities. Recently in *P. Purushottam Reddy and Another Vs. Pratap Steels Ltd.*, the Supreme Court has reiterated the well known principle that where the parties have understood the case, led evidence, the non framing of issues or lack of pleading is inconsequential. In view of the said judgment reliance of the petitioner on AIR 1930 56 (Privy Council) and *Bhagat Singh and Ors. v. Jaswant Singh* AIR 1966 SC 1861 that no amount of evidence can be looked into on a plea which was never put forward is not sustainable in law.

11. The learned counsel for the petitioner contended that the ejectment of the petitioner lacks bona fide in as much as the landlords have been disbelieved on the question of cease to occupy. It is more so that the learned Rent Controller inspected the premises and found that the allegation of the landlord on shifting of business of the tenant at Sirsa road was false. It is further contended that few rooms are still lying locked as found by the learned Rent Controller and therefore, the plea of the landlord of bona fide requirement lacks credibility. The landlord has not come to the court with clean hands.

12. The said argument of the learned counsel for the petitioner is not acceptable. It is not disputed by the petitioner that they had their business at Sirsa Road as well. The fact whether the entire business has been shifted or the premises in dispute are lying locked was subject matter of controversy. Mere fact that the stand of the landlord has not been accepted to seek ejectment of the tenant on the ground that it has ceased to occupy is no ground to hold that landlord is not entitled to seek ejectment even on the ground of bona fide personal requirement. The ratio of the judgments reported as *Duli Chand v. Mahabir Parshad Trilok Chand Charitable Trust* AIR 1984 Delhi 145; *Lok Nath v. Khanaya Lal and Ors.* 1984(1) RCR 480 and *Chanan Mal v. Shiv Shankar Trust* 1999(2) R.C.R. 203 is not applicable in the facts of the present case. As a matter of fact,

in each case the evidence has to be appreciated independently. Merely because the landlord has been found to be not successful on the allegation that the tenant has ceased to occupy does not mean that the landlord is to be disbelieved on all the grounds. The doctrine falsus in uno falsus in omnibus is not a doctrine applicable in India.

13. This Court in C.R. No. 3189 of 2002 decided on 8.7.2003 has held after reliance was placed on Supreme Court judgment reported as SGP, Committee v. M.P. Dass Chela (dead) by L.Rs. AIR 1975 SC 1978 and Vatal Nagaraj Vs. R. Dayanand Sagar, that such doctrine has never been applied in India in civil and criminal cases wherein it has been held that the doctrine falsus in uno and falsus in omnibus is not the doctrine applicable in India. When a part of the evidence of a witness is found to be unreliable, the Court should scrutinise the remaining part cautiously and if the same is found trustworthy, the same can be accepted. This maxim has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence.

14. Therefore, I am unable to hold that since the landlord has been disbelieved on one ground of ejectment, therefore, he is not entitled to seek ejectment on the ground of bona fide requirement as well.

15. The learned counsel for the petitioner lastly argued that the landlord is a Trust but the ejectment petition has been filed by the Trust in its own name and not by the trustees. The reliance was placed on Mandir Jannma Dass Jawaharlal S. Sanatam Dharam Mahabir Dal Trust v. Shankar Dass 2003(1) R.C.R. 582. The Trust is not a juristic identity and therefore, the ejectment petition could be filed only by the trustees. The learned Appellate Authority has discussed this argument and relying upon Jawahar Lal v. Dev Raj and Anr. 1998(2) R.C.R. 735 held that where the premises belonging to Trust have been let out, one of the trustees is authorised to receive rent from any person who is entitled to receive rent whether on his own behalf or even on behalf of other person, would be a landlord. Similarly a Trustee who is entitled to receive rent would be a landlord and therefore, such a person would be entitled to maintain a petition for ejectment of tenant.

16. Learned counsel for the respondent pointed out that the landlord is a Society registered with the Registrar of Societies and is a juristic entity. The certificate of Registration is Ex.P.73. It is conceded by the learned counsel for the petitioner as well that once a Trust is registered as a Society then the petition would be maintainable. In view of the certification of registration Ex.P.73, placed on record, the argument of the petitioner is noticed to be rejected.

17. In view of above discussion, the present revision petition is dismissed. However, the tenant is granted three months time to hand over the vacant

possession of the premises in dispute to the landlord. He shall file an undertaking before the Rent Controller, that he shall pay the entire arrears of rent within one month.