

(1984) 09 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1101 of 1982

Sham Lal and others

APPELLANT

Vs

Sant Ram and others

RESPONDENT

Date of Decision: Sept. 21, 1984**Citation:** (1984) 2 RCR(Rent) 597**Hon'ble Judges:** J.M. Tandon, J**Bench:** Single Bench**Advocate:** V.K. Jhanji, for the Appellant; R.L. Sarin, D. Khanna and Mr. Ram Rang, for the Respondent**Final Decision:** Allowed

Judgement

J.M. Tandon, J.

The Petitioners are the owner-landlords of the rented land in dispute situated in Ludhiana and in occupation of the Respondents as tenants where they are carrying on the business of selling fire wood and coal. In 1976 the Petitioners filed an ejectment petition against the Respondents on the ground of personal requirement of Sham Lal Petitioner where he desired to start a similar business of selling fire wood and coal. The Rent Controller vide order dated 4th August, 1980 held that the claim of Sham Lal for personal requirement of the rented land was genuine and the Respondents were ordered to be ejected. The Respondents assailed the order of the Rent Controller in appeal. The Appellate Authority accepted the appeal vide order dated 9th February, 1987, holding that Sham Lal Petitioner did not genuinely require the land in dispute for his personal use and further the Petitioners had an open plot adjacent to the rented land in dispute, where the business could be started by Sham Lal, if he so desired. The order of the Rent Controller was consequently, set aside and the ejectment application of the Petitioners dismissed. It is against this order of the Appellate Authority that the present revision has been filed.

2. Sham Lal Petitioner stated in his statement that he required the land in dispute for carrying on the business of sale of fuel-wood etc. He has retired from service.

The Petitioners do not own or possess any such vacant land in Ludhiana nor had they vacated any such land. The land was purchased from its original owner in 1957. The Respondents were in possession thereof since before its purchase by them. They had built two shops in 1958-59 over a part of the property that they had purchased in 1957. The place where the shops had been built was in occupation of Faqir Chand and Balwant Rai as tenants. Faqir Chand had a khokha. Over the land He removed the khokha. One of the two shops has been rented to him at Rs. 25/- per month. Jai Dev Petitioner is a cashier in State Bank of India whereas Ram Dev and Balram Dev Petitioners are doing hosiery business. He has not done the business of sale of coal and firewood so far. He has had training in this business from Ram Lal. The area of the land in dispute is 40"x40", A chhapper has been constructed on an area measuring 40"X 13".

3. Sant Ram Respondent appeared as a witness and stated that Shanti Samp, previous owner of the land in dispute, had filed an ejectment application against him which was dismissed in 1951-52. The Petitioners took about 6 wide land out of the land which was in their occupation for constructing two shops abutting the road. He did not know that Sham Lal Petitioner had any vacant land in his possession or he was ever in possession of any such plot or had vacated any such land. Sham Lal Petitioner retired 6 7 years back.

4. Sham Lal Petitioner was a cashier in a Bank He retired in 1973. In 1976 he was aged about 63 years He is neither in service nor has he started business since after his retirement in 1973. The ejectment petition was filed in 1976 One of his brothers is a cashier in the State Bank and two other brothers are in hosiery business. The business of sale of fire-wood and coal does not require a technical expertise. According to Sham Lal Petitioner he has had some training in this business as well. Keeping in view his status in life it is also difficult to hold that he cannot afford finances for running this business The onus to prove that the rented land is required for personal requirement is on the Petitioners Keeping in view, the evidence led on the file and the attending circumstances it will be proper to hold that the claim of Sham Lal Petitioner that he requires the rented land in dispute for his personal requirement for running the business of sale of fire-wood and coal appears to be genuine A contrary finding on this point recorded by the learned Appellate Authority cannot be sustained.

5. The Learned Counsel for the Respondents has argued that assuming Sham Lal Petitioner genuinely wants to start the business of sale of fire wood and coal, then he can conveniently start it in the vacant spece adjacent to the rented land in dispute, which is in occupation of the Petitioners. For this purpose the Learned Counsel hat referred to the plan Exhibit A-1 wherein on the north east corner of the land in dispute an open plot is shown as also to the notice Exhibit A-2 dated 6th May, 1976 issued to the Respondents on behalf of Sham Lal Petitioner wherein in the boundaries of the rented land in dispute vacant land is recorded on a part of

northern side. In the plan Exhibit AW-5/2 a small vacant plot is shown in the north-east side, a part of which is specified as Dabba.

6. The Learned Counsel for the Petitioners has argued that the vacant plot on the north east corner of the rented land in dispute is about 8"x 13" and it is more of a passage. In the plan Exhibit RW-3/1 produced by the Respondents, the open plot in the north-east corner of the rented land in dispute is shown as 18"x13". The argument proceeds that assuming the open plot is 18"x13", it can hardly be taken as sufficient for running the business of sale of fire-wood and coal. The Learned Counsel for the Petitioners has referred to the statement of Sant Ram Respondent, wherein he stated that he did not know if Sham Lal Petitioner had any vacant land in his possession or he was ever in possession of any such plot or had vacated any such land. If a small plot on the north-east corner of the rented land in dispute had been suitable for running the business of sale of fire-wood and coal, Sant Ram Respondent would not have made any such statement. The contention of the Learned Counsel for the Petitioner must prevail.

7. The parties had a protracted litigation. It was not suggested to Sham Lal Petitioner or to any of the witnesses produced by the Petitioners that the Petitioners were in possession of a suitable vacant plot which could be used for running the business of sale of fire-wood and coal. The vacant plot on the north-east of the rented land in dispute is more of a passage and further too small to be used for running the business of sale of fire-wood and coal. The business of sale of fire-wood and coal does need a bigger plot. The area of the rented land in dispute in occupation of the Respondents is about 40" X 40". The ejectment petition filed by the Petitioners cannot be dismissed on the ground that the Petitioners are in possession of a vacant site on the north-east of the rented land in dispute, which can be used by Sham Lal Petitioner for running the business of sale of fire-wood and coal.

8. In the result, the revision is allowed, the impugned order of the Appellate Authority dated 9th February, 1982 set aside and that of Rent Controller dated 4th August, 1980 restored, with no order as to costs. The Respondents are allowed three months' time to vacate the rented land in dispute.