

Vishwa Mitter Vs Amrik Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 23, 1984

Citation: (1985) 1 RCR(Rent) 51

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: Inderjit Malhotra, for the Appellant; G.R. Majithia, for the Respondent

Judgement

J.V. Gupta, J.

This is landlord's petition in whose favour the eviction order was passed by the Rent Controller but was set aside in appeal.

2. Vishwa Mitter Sanan landlord sought the ejectment of hit tenant from the first floor of the building in dispute on the ground that he retired from

service on 31st December, 1979, and now he wants to settle in his house at Fatehgarh Churian, Tehsil Batata, and, therefore, requires the

premises for his own use and occupation. The application was filed on 27th April, 1981. It was also pleaded that he was not in occupation of any

other residential building in the urban area concerned, nor has vacated any. At regards the ground floor of the building, it was stated that it was not

available for his residence as the same was under the occupation of hit tenants and was also not fit for residence as such, as there was no kitchen,

bath-room or latrine etc. on the ground floor. The application was contested on behalf of the tenant. The personal requirement of the landlord was

controverted. It was alleged that out of the ground floor two: rooms were in ocepation of the landlord. The remaining rooms on the ground floor

about one or two years back of the filing of the ejectment application had fallen vacant and the landlord leased them out. The landlord's allegation

that the ground floor was in a rotten condition and not worthy of his living was hotly contested. It was also pleaded that the landlord was living at

Patiala with his two sons and under the circumstances there was no bonafide personal requirement. The learned Rent Controller found that no

doubt there is a ground floor which is in occupation of the Soil Conservation Department at well as the Electricity Department, but the same it not

fit for habitation. It was also found that no doubt half portion of the premises in dispute was rented out to the Soil Conservation Department on rent

on 1st August, 1978, when the landlord was due to retire on 31st December, 1979. It was also found that it may be that the landlord rented out the

second portion on the ground floor on 1st September, 1981, to the Electricity Department i.e. after the ejectment application was filed, but since

there was no latrine or bath-room on the ground floor, whereas all these facilities were available in the demised premises, the need of the landlord

appears to be bonafide. Consequently, the eviction order was passed. In appeal, the learned Appellate Authority reversed the said findings of the

Rent Controller and came to the conclusion that there was no force in the allegation of the landlord that the ground floor was not suitable for his

residence. It was further found that there was no element of need in the ground of personal requirement, as alleged by the landlord. Consequently,

the eviction order was set aside. Dissatisfied with the same, the landlord had filed this petition in this Court.

3. The Learned Counsel for the Petitioner contended that since the basic amenities were not available on the ground floor and, therefore, the

requirement of the landlord to occupy the first floor in occupation of the tenant was bonafide in the circumstances of the present case. Thus, argued

the Learned Counsel, the finding of the Rent Controller in this behalf was correct, but the same has been reversed in appeal arbitrarily on surmises

and conjectures. According to the Learned Counsel, the entire evidence has not been properly appreciated and, therefore, the finding arrived at

was vitiated. It was also contended that it was of no consequence that the portion on the ground floor was rented out during the tendency of the

ejectment application because it was not fit for residence as such, particularly keeping in view the status of the landlord who retired as Executive

Engineer. In support of this contention, reference was made to *I abhoo Ram v. Seetal* (1968) 70 P.L.R. 258. *Padam Parshod Jain v. Shri Atma*

Ram 1981 C.L.J. (Civil) 105, and *Shri Vidhya Sagar Sayal v. Tara Chand*(Died). *Smt. Raj Pari and Ors.* 1983 (2) R.L.R. 490. Reference was

also made to *Gurdial Singh v. Ram Singh Sachdeva* 1982 (1) R.C.J. 452, to contend that the landlord was entitled to get his own house vacated

after his retirement.

4. On the other hand, Learned Counsel for the tenant submitted that it has been found as a fact by the Appellate Authority that the requirement of

the landlord was not bonafide and it being a finding of fact could not be interfered with in revisional jurisdiction. It was also contended that the very

fact that the landlord rented out the portion on the ground floor to the Electricity Department on 1st September, 1981, during the pendency of the

ejectment application, proved that his requirement was not immediate or bonafide. In support of his contention, he referred to *Ashok Kumar*

Bagga v. Prithvi Nath Kaul (1980) 82 P.L.R. 171, and Rattan Chand Jain v. Charan Singh 1978 (1) R.C.J. 273.

5. I have heard the Learned Counsel for the parties and also gone through the relevant evidence on record and the case law cited at the bar.

Admittedly, in the present case the portion of the ground floor had fallen vacant and the same was rented out to the Electricity Board on 1st

September, 1981. According to the learned course, he did not occupy the same because the necessary amenities i.e. bathroom, latrine and kitchen

etc. were not available on the ground floor. It has also come in evidence that the ground floor was constructed about 100 years back, whereas the

first floor was constructed about 33 years back before the filing of the ejectment application. Ordinarily it is the choice of the landlord as to which

portion he requires for his own occupation. There would not have been much difficulty even if the landlord had rented out the portion on the

ground floor to the Electricity Board on 1st September, 1981. But apart from that there is evidence on the record and in the statement of the

landlord himself that his wife is already dead. He is all alone and at present is living with his sons. Though there may not be any bar in occupying his

own demised premises after his retirement but the question still remains to be decided whether his requirement as such is immediate and bonafide.

From the evidence on record, both the views are possible. Once it is so found, then the view taken by the Appellate Authority that the requirement

was not bonafide could not ordinarily be interfered with in revisional jurisdiction. From the totality of circumstances for the time being the landlord

has failed to prove that he required the premises for his occupation immediately. Consequently, the petition fails and is dismissed with no order as

to costs. However, it is made clear that the landlord would be entitled to seek the ejectment of his tenant on the ground of bonafide personal

requirement on the change of circumstances in future and this order will not stand in his way.