

(1984) 11 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1430 of 1984

Vishwa Mitter

APPELLANT

Vs

Amrik Singh

RESPONDENT

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 oceupation 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 as well as the Electricity Department, but the same is 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 has 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 pendency 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 counsel, 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.