

(1981) 09 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2879 of 1979

Des Raj

APPELLANT

Vs

Jagdish Kaur

RESPONDENT

Date of Decision: Sept. 21, 1981

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3)

Citation: AIR 1982 P&H 64 : (1981) 2 RCR(Rent) 602 : (1981) 2 RCR(Rent) 483

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

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. Des Raj, landlord petitioner, has filed this revision petition against the order of the Appellate Authority, Jullundur, dated Sept. 24, 1979, whereby the order of the Rent Controller, Jullundur dated Oct. 28, 1978 directing the ejectment of Shrimati Jagdish Kaur, tenant-respondent, from the demised premises was set aside.

2. Shrimati Jagdish Kaur, was the tenant in the portion of house No. WB-80, comprising of two rooms, kitchen, bath room and the courtyard, on a monthly rent of Rs. 47.50 since the year 1966. Her ejectment was sought inter alia on the ground that the land lord bona fide required the premises for his own use and occupation. The other grounds though taken in the ejectment application are not relevant for the purpose of this revision petition. It was pleaded therein that the premises, in question, were bona fide required by the landlord for his personal use and occupation as the accommodation available with him was quite insufficient to meet his and his family's requirements. He was in occupation of only two rooms and one kitchen in house No. WB-80; was not in occupation of any other residential building in the urban area of Jullundur City and had not vacated such a building without sufficient cause. The family of the landlord consisted of his mother, his wife, three sons and a married daughter. Two sons of the landlord were studying in the eighth

and the ninth classes. His elder son was about 23 years old. The eviction application was filed on Apr. 26, 1975. In the written statement filed on behalf of the tenant respondent had got four rooms, a kitchen, a big courtyard and a parchhati in his possession which were sufficient for his and his family's accommodation. None of the petitioner's son was married. The petitioner had previously also filed an application for the ejection of the respondent which was dismissed by the Rent Controller on Jan, 31, 1967. In that application also, the landlord had pleaded that he bona fide required the demised premises for his own use and occupation, and the decision in that application operated as res judicata. On the pleadings of the parties, the Rent Controller framed the following issues :

1. Whether the petitioner requires the demised premises for his own use and occupation, bona fide ?

1-A. Whether the present ejection application is barred by res judicata in view of the objection taken in para 1 of the preliminary objection ?

2. Whether the respondent has materially impaired the value and utility of the demised premises ?

3. Whether there is change of user effected by the respondent ? If so, to what effect ?

4. Relief.

The learned Rent Controller passed the order of ejection against the tenant-respondent as it came to the conclusion that the landlord bona fide required the premises for his own use and occupation and that she had changed the user of the demised premises from residential to non-residential. In appeal, the learned Appellate Authority, reversed the finding of the learned Rent Controller on both the grounds and consequently, dismissed the ejection application. Feeling aggrieved against the same, the landlord-petitioner has come up in revision to this Court.

3. The learned counsel for the petitioner, contended that the learned Rent Controller, rightly held that the children of the landlord were not small kids and two of them were school going while the third was grown up and the requirement of separate study rooms for the school going children cannot be dubbed to be mala fide or unrealistic. His elder son was 24 years old while the other two sons were 20 and 16 years old respectively and were the students of the tenth and the ninth class, respectively. The betrothal of his eldest son had also been performed and he was to be married. It has been stated at the bar by the learned counsel for the petitioner, that after the passing of the order by the Rent Controller, the eldest son of the petitioner has been married and out of that wedlock, a child has also been born. According to the learned counsel, the approach of the learned Appellate Authority was wholly illegal and it misdirected itself in coming to the conclusion that the landlord had failed to prove his bona fide requirement. On the other hand, the

learned counsel for the respondent submitted that the Appellate Authority, after going through the evidence, has given a firm finding that the requirement of the landlord was not a bona fide one and it being a finding of fact., cannot be interfered with in the exercise of the revisional jurisdiction by this Court. Moreover, there is no evidence that there is any change in the status of the landlord after he let out the premises, in the year 1966 to the respondent; rather one of the family members, i.e., his mother, has died and thus, the number of his family members has decreased and, therefore, there was no question of any bona fide requirement, as alleged by the landlord.

4. I have the heard counsel for the parties at a great length and have also gone through the record.

5. The learned Rent Controller, rightly came to the conclusion that the accommodation in occupation of the landlord was insufficient for his requirements and he had not vacated any residential building in Jullundur City after the coming into force of the East Punjab Urban Rent Restriction Act, nor he was in occupation of any other residential building. Moreover. at the time of the filing of the application, his eldest son was betrothed and now as stated at the bar, he was married during the pendency of the eviction proceedings and even a son was born out of that wedlock. u/s 13(3)(a)(iv) of the aforesaid Act, the landlord is entitled to seek the ejectment of the tenant, for the residence of his son, who is married. In any case there is nothing on the record to suggest that the requirement of the landlord was not a bona fide one. The learned Appellate Authority has given undue importance to the factum of the earlier eviction application filed by the landlord against the tenant having been dismissed by the Rent Controller on Jan, 31, 1967. The observations made by the Appellate Authority that the landlord was always on the look out to eject his tenant and his personal necessity had continued right from 1966 on wards, are unwarranted. Admittedly, the eviction application out of which the present revision petition has arisen., was filed in the year 1975. i.e. after more than 8 years of the previous ejectment application. During this period, the family of the landlord has grown up in age inasmuch as even the eldest son has been married during this period. It is not required that the landlord must prove the change in his status in social life to justify his requirement, as observed by the Appellate Authority. The need of the landlord has grown with the advancement of the age of his children and as observed earlier, even the statute itself has provided an independent ground for the ejectment of a tenant in case the landlord requires the demised premises for the residence of his married son. There is absolutely no evidence on the record on behalf of the tenant that the accommodation in possession of the landlord was sufficient to meet his requirement. Under the circumstances, the finding of the Appellate Authority that the landlord has failed to prove his bona fide requirement; particularly when the social status of the landlord has not changed after the leasing of the demised premises to the tenant, is improper and is based on surmises and conjectures. The Rent Controller, after discussing the whole evidence, came to the

right conclusion that the growing up of the children would definitely amount to the change of circumstances and the needs of the landlord.

6. For the reasons recorded above, this revision petition succeeds and is allowed. The order of the Appellate Authority is set aside and that of the Rent Controller, directing the ejection of the tenant-respondent, is restored with costs. However, she is allowed two months' time to vacate the premises, provided all the arrears, if any, and the advance rent for two months, are deposited with the Rent Controller within a fortnight from the date of this order.

7. Petition allowed.