

(2014) 03 P&amp;H CK 0263

**High Court Of Punjab And Haryana At Chandigarh****Case No:** C.R. Nos. 6594, 6629 and 6996 of 2010 (OandM)

Anil Kumar Ahuja

APPELLANT

Vs

Anurag Bansal

RESPONDENT

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**Date of Decision:** March 6, 2014**Acts Referred:**

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13

**Citation:** (2014) 2 RCR(Rent) 319**Hon'ble Judges:** Mahesh Grover, J**Bench:** Single Bench**Advocate:** Vikas Behl, Sr. Advocate and Divanshu Jain, Advocate for the Appellant; A.S. Chadha, Advocate for the Respondent

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**Judgement**

Mahesh Grover, J.

This order shall dispose of C.R. Nos. 6594, 6629 and 6996 of 2010. The facts are being taken from C.R. No. 6594 of 2010. The petitioners impugn the order dated 31.05.2010 passed by the Appellate Authority by which their petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 seeking eviction of the respondent from the commercial property described as Shop No. 3 and 4, First Floor, SCF No. 54, Sector 15, Faridabad had been dismissed while reversing the findings recorded by the learned Rent Controller.

2. Eviction of the respondent was sought by the petitioners on the ground of non-payment of rent, personal necessity, change of user, material alterations and nuisance.

3. The petitioners had pleaded that the respondent-tenant had made alterations in the premises which invited an adverse notice from the HUDA Authorities and the petitioners were asked to bring the building in conformity with the Building Bye-laws. This notice was issued to the petitioners on 14.06.2001 and failure on the part of the respondent to remove the alterations had led to filing of the petition on

05.03.2002. Personal necessity was pleaded for the need of the petitioners and two nephews, who wanted to start their business in the premises. The Rent Controller accepted the plea whereas the Appellate Court reversed the findings.

4. The grievance of the petitioners is that if the building needed to be brought in conformity with the Building Bye-laws and the presence of the tenant was prohibiting them from pursuing such a course, then they were very well within their rights to seek his eviction and that the Appellate Court failed to consider this appropriately. That apart, it has been stated that Appellate Court went wrong in considering evidence of some other case pursued by another tenant and formed an opinion adverse to the petitioners. The Appellate Court had observed that the non-disclosure of the factum of the petitioners having other premises in the urban area was fatal to their cause. The plea of personal necessity was, however, not accepted by the Appellate Court and it has been contended that this plea was not rightly appreciated by the Appellate Court.

5. Leaned counsel for the respondent has sought to justify the order of the Appellate Court and the reasoning adopted by it.

6. After hearing learned counsel for the parties, I would proceed to record my findings as under:-

It is not in dispute that a notice was issued by the HUDA Authorities requiring the petitioners to bring the building in conformity with the Building Bye-laws. Exb. P-11 is a testimony to this fact. The petitioners filed the petition almost instantly i.e. 05.03.2002. This Court is of the opinion that if the building or premises belonging to a landlord imperil the building's status by inviting an action contemplated by the Local Authorities on account of building violations, then this itself would constitute a personal necessity of the landlord to get the premises vacated so as to enable them to bring it in accordance with the Building Bye-laws to protect his property. It will be of a little significance that such violations are attributed to the tenant or the landlord himself. Assuming that the landlord is responsible for carrying out such alterations, but if confronted with the situation of an adverse action, then his desire to remove such violations can not be impeded by the tenant. It has also been brought to the notice of this Court that resumption proceedings concluded in the year 2011.

7. This Court is of the opinion that in order to avoid the consequences of resumption of building, it would be imperative to have the premises vacated from the tenant so as to obviate such a situation.

8. In so far as, personal necessity pleaded for carrying out the business by the petitioners and their nephews is concerned the Appellate Court has also gone wrong in not appreciating this fact in the right perspective. Even if it is assumed that the petitioners had some other booths in the locality, yet it was for them to decide which building was more conducive to the business that they intended to start by associating more members of their family. The Appellate Court has also adopted a

reasoning that some portion of the building was still on rent and given out to the tenants on or around the time when the petition was initiated and one portion was given to a Bank during the pendency of the petition itself and since the petitioners had not sought their eviction, the plea of bona fide necessity was not acceptable. Similarly, it was noticed that another portion of the shop was let out in the year 2005, after the issuance of demolition notice and even after inception of resumption proceedings.

9. Learned counsel for the respondent states that similar exercise for eviction of tenants on the ground floor was undertaken by the petitioners on the ground of personal necessity, the ground which has been expressed in the instant petition as well. Those premises were got vacated though let out subsequently. Similarly, he states that one of the shops on the first floor was also got vacated on 31.01.2001 on similar grounds.

10. There seems to be element of correctness in what the learned counsel for the respondent has propounded but this reasoning would be restricted to the personal necessity plea raised by the landlord for use and occupation of the family members to run a business. It would still not rob the petitioners of the first ground where their property is confronted with a peril of resumption, which fact has actually taken place by virtue of the order, which was shown to the Court and taken on record as Mark "A". This order dated 21.10.2011 indicates that SCF No. 54, Sector 15, Faridabad, the demised premises has been resumed.

11. As observed earlier that in the eventuality of the landlords being confronted with the peril of losing their premises to the Local Authorities on account of violations which they intend to remove to protect their property, then such a case would also be construed to be a genuine need requiring eviction of the tenants so that the petitioners can take appropriate steps in this regard.

All the petitions are, thus, accepted.

The respondent is directed to be evicted from the demised premises. In case the petitioners do not bring the building in conformity with Building Bye-laws, then apart from the action that they face at the hands of the Authorities, the petitioners would also be liable to face proceedings under the Contempt of Courts Act for misleading the Court and the respondent would be at liberty to apprise this Court appropriately in such an eventuality.