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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(113)

CR-6533-2024 (O&M)

Date of Decision: - 18.02.2025

Babu Ram (since deceased) through his legal heirs

...Petitioners

Versus

Tilak Raj

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. G.C. Shahpuri, Advocate,
for the petitioners.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present revision petition is to the judgment dated 23.02.2018, vide which the petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to be as 'Act of 1973'), filed by the respondent-landlord, has been allowed and the eviction of the present petitioner from the house in question has been ordered. Challenge is also to the judgment dated 31.08.2024 vide which the appeal filed by the petitioner through his legal representatives has been dismissed.

2. Learned counsel for the petitioners has challenged the impugned judgments by raising four submissions. The first ground of challenge is that at the time of filing of the petition i.e. on 22.04.2015, the



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respondent-landlord had stated that in the residence at House No.160, Model Colony at Yamuna Nagar, where he is residing with his son, was to be exclusively used by his son and his daughter-in-law and son of the respondent-landlord was also maintaining his separate godown near the said house in Model Colony, Yamuna Nagar for his business. It is submitted that however during the course of cross-examination, the said respondent-landlord/Tilak Raj had admitted that after the filing of the petition he had shifted the godown in the month of September to the house in question at Model Colony, Yamuna Nagar. It is submitted that the same was done in order to make out a case for eviction and the same shows malafide on the part of the respondent-landlord.

3. The second ground of challenge raised by learned counsel for the petitioners is to the effect that the respondent-landlord and his wife have other property and thus, the requirement of the respondent-landlord is not bona fide. It is stated that wife of the respondent-landlord Neelam Rani was the owner of plot number 180, Model Colony, Yamuna Nagar-Jagadhri and in order to prima facie shows the said fact, a reference was made to Ex.R-12, which was the document issued by the Municipal Corporation, Yamunanagar-Jagadhri on 09.11.2016, showing that the said Neelam Rani was the owner of the said property. It is stated that the said Neelam Rani had transferred the said plot in favour of her daughter-in-law Sandhya Jolly on 13.09.2017 and for the said purpose, the petitioners have referred to Ex.R2. The copies of both the said documents although have not been annexed with the present petition but have been shown to



this Court during the course of arguments.

4. The third ground of challenge raised by learned counsel for the petitioners is to the effect that the respondent-landlord had earlier filed an eviction petition in the year 2003 for eviction of the present petitioner from the premises in question on the ground of personal necessity of his son and the said eviction petition was dismissed on 26.09.2007 and even the appeal from the same was dismissed on 31.03.2009. It is submitted that the respondent-landlord is thus estopped/barred by the principle of *res judicata* from filing the present revision petition and it also shows that the same is not filed bona fide.

5. The fourth ground of challenge in the present case is that the premises in question is 10' x 12' and the total area of the house in question is 35 sq. ft and thus, is a very small house and it is not possible that the respondent-landlord, who is residing alongwith his son in House No.160, Model Colony, Yamunanagar, which is 200 sq. yards, would shift to a small house and the present petition has been filed only to seek enhancement of rent. It is submitted that on the said grounds, the impugned order deserves to be set aside and the petition filed by the respondent-landlord for eviction deserves to be dismissed.

6. This Court has heard learned counsel for the petitioners and has perused the paper-book and finds that the impugned judgments are in accordance with law, deserve to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.



7. The respondent-landlord had filed a petition under Section 13 of the Act of 1973, for eviction of the petitioner (now represented by his legal representatives) from House No.20, situated at Bhatia Nagar, within the limits of MC, Yamuna Nagar, District Yamuna Nagar. The plea of bona fide requirement was raised in para 3(ii), which is reproduced herein below: -

“3. xxx xxx xxx

(ii) That the house in dispute is urgently and bonafidely required by the applicant for his personal bonafide need and occupation. The applicant was earlier employed in Ballarpur Industries Ltd. and is presently living in Model Colony, Yamuna Nagar at the 1st Floor. The applicant had retired from Paper Mill on 30.06.2013 and had then started his business of cattle feed on main Jagadhri Road behind which the house in dispute is situated. The applicant is a senior Citizen and is facing difficulty in moving to the 1st floor and also being far and away from shop and on all respects now seeing his business involvement and in conveniences, he requires the house in dispute for his personal bonafide need for his residence along with his wife. The applicant shall use the house in dispute as his permanent residence and the residence at Model Colony, Yamuna Nagar shall be used by his son exclusively and his daughter-in-law as the son of the applicant is also even maintaining his separate godown near that house in Model Colony, Yamuna Nagar for his business and he shall run his business only from Model Colony, Yamuna Nagar. The applicant has full knowledge of the cattle feed and allied business and wants to fully devote himself in the business and the house being located behind that shop in the Gali in which the applicant has his business is best suited for residential purpose considering the age and convenience of the applicant. The applicant does not own or possess any other property except as detailed above within the urban area of Yamuna Nagar and has not vacated any such property or building within the corporation



limits of M.C. Yamuna Nagar without any reasonable cause after the commencement of 1949 Act for meeting his requirement.”

A perusal of the above pleadings would show that the primary reason given by the respondent-landlord to seek eviction of the premises in question was that he had retired from Paper Mill on 30.06.2013 and had started his business of Cattle feed in the shop behind the house in dispute and he being a senior citizen was facing difficulty in moving to the 1st floor and also the premises where he was residing i.e., Model Colony, Yamuna Nagar along with his son and daughter-in-law was far away from the shop in question and thus, he could not oversee his business and therefore, required the premises in question for his personal need for residence. It was further pleaded that he had full knowledge of the cattle feed and allied business and wanted to fully devote himself to the said business and since the house in question was located behind the shop where he was carrying his business, thus, it was best suited for his residential purpose.

8. The Rent Controller, vide order dated 23.02.2018, passed the eviction order on the ground of personal necessity and directed the petitioner to hand over the vacant and peaceful possession of the premises in question. A perusal of the said judgment would show that it was observed by the Rent Controller that the house where the respondent-landlord was staying i.e., Model Colony was approximately 2 kms away from the shop where the respondent-landlord was carrying on his business, whereas, the demised premises was situated at the back of it and



thus, there was bona fide requirement of the respondent-landlord to shift in the premises in question. It was further observed that it was not for the tenant or for the Court to sit in judgment over the convenience of the respondent-landlord.

9. The Appellate Authority while dismissing the appeal, filed by the petitioners, on 31.08.2024 observed that the respondent-landlord had appeared as his own witness as PW-1 and had reiterated the averments made in the rent petition with respect to his bona fide requirement and in spite of lengthy cross-examination, nothing adverse could be elicited from him. It was further observed that the respondent-landlord had produced on record VAT form (Ex.P3) pertaining to his Firm Baba Feed Store and Income Tax Return (Ex.P4) in order to show that he was carrying on his business of cattle feed. It was further observed that RW1 Babu Ram had admitted during his cross-examination that house in dispute was situated behind the shop of the respondent-landlord and there was only a street in between them and thus, it was found that the requirement as projected by the respondent-landlord was bona fide. Reliance was placed upon a judgment of the Hon'ble Supreme Court in case of "*Sarla Ahuja Vs. United India Assurance Company Limited, reported as AIR 1999 SC 2507*, in which, it was observed that when a landlord asserts that he requires his building for his own occupation, the Rent Controller should not proceed on the presumption that the requirement is not bona fide and it is not for the tenant to dictate terms to the landlord as to how else he should adjust himself without getting



possession of premises in question. The other arguments raised by the tenant were also rejected.

10. This Court is of the opinion that the concurrent findings of fact given by both the Courts below on the aspect of requirement of the respondent-landlord being bona fide is in accordance with law and deserves to be upheld. It could not be disputed that the premises in question is very close to the shop where the respondent-landlord is carrying on his business and there is only one street between the said shop and the premises in question and thus, it is very convenient for the respondent-landlord to occupy the said premises and effectively carry on his business. The averments in the petition with respect to bona fide requirement (reproduced in para 4 of the present judgment) have been duly substantiated by the evidence of the respondent-landlord who has appeared as AW1 and also by the documents including Ex.P3 and Ex.P4 which have been exhibited on record. Accordingly, the finding on the said aspect of both the Courts is upheld.

11. The arguments raised on behalf of learned counsel for the petitioners do not call for setting aside the concurrent findings of fact by the Courts below. The first argument raised by learned counsel for the petitioners to the effect that subsequent to the filing of the eviction petition, son of the respondent-landlord had shifted his godown in the house in Model Town, where the respondent-landlord was residing with his son and daughter-in-law to make out a ground for bona fide necessity, is meritless. As has been stated herein above, the primary reason to seek



eviction was to the effect that the respondent-landlord retired in the year 2013 and was carrying on his business in the shop, which was very close to the premises in question and that it was inconvenient for him to stay in a house which was at a distance of about 2 kms from the place of business and that he wanted to stay in a house which was very close to the place of business. The question as to how the son utilizes the premises in which he is residing is not relevant for the purpose of testing the bona fide requirement of the respondent-landlord. The Rent Controller has thus rightly observed that the aspect as to whether the son of the respondent-landlord had used a part of his residence for godown or not has no connection with the genuineness of the requirement of the respondent-landlord, which has been duly proved on record.

12. Even the arguments raised on behalf of the petitioners to the effect that wife of the respondent-landlord has a plot as shown in Ex.R12 and that she had transferred the same to her daughter-in-law as reflected in Ex.R2 does not call for setting aside the judgments. In this regard, it is relevant to note that it had been specifically stated by the respondent-landlord in his eviction petition that he does not own or possess any other property within the urban area of Yamuna Nagar except what has been stated in the said petition. A perusal of Ex.RW12, which is a notice-cum-bill issued by the Municipal Corporation, Yamunanagar-Jagadhri dated 09.11.2016 would show that the said Neelam Rani has a plot in her name. Firstly, the said document is not a document of title and learned counsel for the petitioners has not been able to refer to any registered sale deed in



the name of the said Neelam Rani. Moreover, even presuming that Neelam Rani is owner of another plot, it has not been disputed before this Court that the same was only a vacant plot at the date of filing of the petition, which is proved from the fact that the petition was filed on 22.04.2015 and Ex.R12 is a document dated 09.11.2016, showing that it refers to the property as “plot”. The provisions of Section 13(3)(a) of Act of 1973 which are relevant in the present case, are reproduced as under: -

“(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

*(a) in the case of a **residential building**, if, -*

*(i) he requires it for his own occupation, is not occupying **another residential building** in the urban area concerned and has not vacated **such building** without sufficient cause after the commencement of the 1949 Act in the said urban area;”*

A perusal of the above provision would show that for the purpose of eviction of a residential building, the vacation/occupation only of a residential building is relevant. A vacant plot cannot be stated to be a residential building and thus, another vacant plot in the name of respondent's wife or even in the name of daughter-in-law is completely irrelevant for the purpose of determining the bona fide of the respondent-landlord with respect to occupying the present building which is a residential building.

13. It is also relevant to mention that Ex.R2 is not a sale deed and the same is an Assessment Register of the Municipal Corporation, Yamunanagar-Jagadhri showing that the property i.e. plot number 180 in Model Colony is now in the name of Sandhya Jolly. At any rate, the



judgments of the Courts below do not call for being set aside on the said aspect.

14. The argument with respect to estoppel/*res judicata* is also meritless. In the eviction petition in paragraph 5, it had been specifically stated by the respondent-landlord that around 8-9 years ago when the respondent-landlord was in job, he had filed an eviction petition against the present petitioner on the ground of commercial need of his son, which was not allowed and it is thus, apparent that the respondent-landlord had not concealed the factum with respect to the earlier litigation in his pleadings. It could not be disputed before this Court that the earlier eviction petition was filed when the respondent-landlord was in job and it was for the personal necessity of his son. It is also not disputed that the said rent petition was dismissed on 26.09.2007 and the appeal therefrom was dismissed on 31.03.2009. The respondent-landlord had retired on 30.06.2013 and the present eviction petition was filed on 22.04.2015 i.e., after a period of more than six years from the date when the appeal filed in the earlier eviction petition was dismissed. Moreover, there has been a substantial change in circumstances from the date of filing of the earlier eviction petition to the date of filing of the present eviction petition as the respondent-landlord had retired on 30.06.2013 and after waiting for a period of one year and ten months from his retirement, he had filed the present eviction petition for his own requirement. The Appellate Authority has thus rightly observed that the plea of *res judicata* is not applicable in such a case. It is a matter of settled law that the plea of *res judicata*/estoppel do not apply in a rent case where a fresh eviction



petition has been filed on changed circumstances, more so, when the said circumstances were not in existence when the previous case was filed. On the said proposition, it would be relevant to take note of the judgment of the Co-ordinate Bench of this Court in the case of “Shri Jainendra Gurukul Panchkula Vs. Dev Raj”, reported as 2002(2) RCR (Rent) 218 and also in the case of “Meenu Thakur Vs. Manjit Singh, reported as 2023(2) RCR (Rent) 43. In the case of *Meenu Thakur (supra)*, the earlier petition was filed by the respondent-landlord for the personal necessity of his son, whereas, subsequent petition was filed after a period of 7 years after he had retired and hence it was held that the petitioner therein failed to prove the bar of *res judicata*. The facts of the said case are similar to the facts of the present case. No contrary law has been cited on behalf of the petitioners on the said aspect.

15. Even the last argument raised on behalf of the petitioners to the effect that the premises in question is a very small premises and it is unlikely that the respondent-landlord will shift to the demised premises by leaving the house which he is already occupying alongwith his son and daughter-in-law, again does not call for setting aside the concurrent findings of fact by both the Courts below. The requirements projected by the respondent-landlord of staying close to the shop where he was carrying on his business have been found to be bona fide. Section 13(6) of the Act of 1973 specifically provides that where a landlord had obtained possession of the building on the grounds mentioned therein including the ground of personal necessity and does not occupy the same for a



continuous period of twelve months from the date of obtaining possession, then, it would be open to the tenant to apply to the Controller for an order directing restoration of possession of such building or rented land to him.

16. Section 13(6) is reproduced herein below: -

*“(6) Where a landlord, who has obtained possession of a building or rented land in pursuance of an order under sub-clause (i) of clause (a) or clause (b) of sub-section (3), does not himself occupy it or if possession was obtained under sub-clause (v) of clause (a) of sub-section (3), his family does not occupy the residential building, or if possession was obtained by him on behalf of his son in pursuance of an order under sub-clause (ii) of clause (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, [for a continuous period of twelve months from the date of obtaining possession or if possession was obtained under sub-section (3-A) he does not occupy it for his exclusive personal use, for a continuous period of three years] or where a landlord who has obtained possession of a building under clause (c) of sub-section (3) puts that building to any use or lets it out to any tenant other than **the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that the possession of such building or rented land shall be restored to him and the Controller shall make an order accordingly.**”*

17. Thus, there are sufficient safeguards as per which it is incumbent upon the respondent-landlord to occupy the premises after eviction. Moreover, in case he does not occupy the same, then, it is always open to the petitioners to move an application as provided under Section 13(6) of the Act of 1973. Merely on the assumption that the respondent-landlord would not occupy the premises, the concurrent



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findings of fact cannot be set aside.

18. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned judgments do not call for any interference and accordingly, the impugned judgments are upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

February 18, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes