IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R No.135 of 2000

Judgment reserved on:25.8.2006

Date of decision : 31.08.2006

Kumari Pushpa Chauhan **…..Petitioner.**

VERSUS

Shreedhar Sharma **…..Respondent.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] ***YES***

For the Petitioner: **Mr.B.M.Chauhan,Advocate.**

For the Respondents : **Mr.R.K.Bawa,Senior Advocate, with Mr.Rajpal Thakur, Advocate.**

Deepak Gupta, J.

The respondent, hereinafter referred to as the landlord filed a petition for eviction of the tenant as specified landlord under Section 15(2) of the H.P.Urban Rent Control Act. The relevant portion of the Section reads as follows:-

> **"15(2)** Where a specified landlord, at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the appointed day whichever is later, applies to the Controller, alongwith a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of one residential building, for his own occupation, there shall

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? YES***

accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary a right to recover immediate possession of such residential building or any part or parts of such building if it is let out in part or parts."

The Rent Controller accepted the petition of the landlord and ordered the eviction of the petitioner-tenant and hence the present revision petition filed by the tenant under Section 16(8) of the Act which reads as follows:-

"**16(8)** No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section.

Provided that the High Court may, for the purposes of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such orders in respect thereto as it thinks fit."

The brief facts of the case are that the landlord retired as General Manager of the H.P. State Wool Procurement and Marketing Federation on 31.7.1993. On 29.7.1994, i.e. within one year of his retirement he filed a petition claiming eviction of the tenant from the demised premises on the ground that he needed the said premises for setting up his own practice as a Veterinary doctor and to establish a Veterinary Clinic and Hospital in the said building. The landlord stated that he was in occupation of four rooms in the top storey, but this accommodation was not suitable for running a clinic and according to the landlord in the entire building owned by him the only premises which were suitable for

running a Veterinary Clinic were the premises in the occupation of the tenant since there was sufficient open space/court-yard appurtenant to it. The landlord also filed an affidavit stating that he or his wife did not own and possess any other suitable accommodation in the municipal area of Shimla town in which he intends to start his Veterinary Clinic/Hospital. The tenant sought leave of the court to contest the petition on various grounds. The tenant was permitted to contest the petition and thereafter the parties led evidence. The learned Rent Controller allowed the petition and ordered eviction of the tenant. Hence the present petition.

The undisputed facts are that the building in question is a three storeyed building. The top floor abuts the road and is occupied by the landlord and his family and it consists of four rooms, two bath rooms, kitchen, store and an open terrace. Below this floor is the middle floor which consists of similar accommodation rented out as one room and two room sets. The ground floor consists of four rooms, bath-room, kitchen etc. A two room set alongwith kitchen and bath-room is in the occupation of the tenant and there is similar accommodation on the other side of the building . Initially this similar accommodation was rented out as two separate one room sets. The admitted position is that during the pendency of this petition the two single room sets fell vacant and the landlord acquired possession of the same sometime in the year 2000. The tenant filed CMP No. 384 of 2001 to place these facts on record. The landlord did not deny the fact that these rooms/accommodation had fallen vacant, but according to him the

said accommodation was not suitable for the purposes of running the Veterinary Clinic and Hospital since it had no court-yard or compound adjacent to it. The tenant also filed another petition being CMP No. 295 of 2006 to place on record the fact that in fact now the landlord has sold the adjoining two room set. In reply to this application the landlord has admitted that this two room set has been sold by him to one Sudesh Seth, but he has reiterated that the said set was not suitable for running Veterinary Clinic.

A bare perusal of the statement of the landlord made before the trial court clearly reveals that both, prior to his retirement and after his retirement, prior to filing eviction petition and even after the filing of the eviction petition till the time when his evidence was recorded a number of single room sets fell vacant both on the ground floor and in the middle floor. The landlord rented these sets out to fresh tenants and his explanation is that he needed at least two rooms to run the clinic and other than the set which is in the occupation of the tenant, no other accommodation which fell vacant or was available in the building was suitable for running a Veterinary Clinic.

Mr.Chauhan, learned counsel for the petitioner-tenant has argued that the order of the Rent Controller is devoid of any reasoning. According to him the Rent Controller after setting out the pleadings, the evidence, the authorities cited has not given any reasoning and has in a very cryptic manner held that in its opinion the demised premises were the only suitable premises to start a Veterinary Clinic. According to him the bona fides of the landlord are extremely doubtful and in fact the eviction petition is

actuated by mala fide intention. In this regard he has made reference to the admitted facts that the landlord had first filed a petition for fixation of fair rent against the tenant. He also submits that the landlord had cut off the water supply of the tenant and the tenant was forced to approach the Rent Controller for restoration of amenities. The Rent Controller accepted the petition of the tenant and ordered restoration of the water supply. When this order was not complied with the tenant filed a contempt petition and the matter was finally compromised in this court when the landlord stated that he would have no objection if the tenant makes arrangement for obtaining her own water supply and he would not obstruct the same. He submits that since the rent being paid by the tenant is only Rs.450/- per month, the mala fides of the petitioner are writ large. According to Mr.Chauhan, the mala fides are also apparent from the fact that the petitioner had not mentioned in his petition or affidavit that a number of premises in the same building had fallen vacant. He submits that the landlord tried to hood-wink the Rent Controller by withholding material facts.

On the other hand, Mr.R.K.Bawa, learned Senior Advocate, appearing on behalf of the landlord, submits that this court in revisional jurisdiction should not reappreciate the evidence and that no case is made out for interfering in the well reasoned judgment of the Rent Controller. He further submits that in proceeding under Section 15(2) of the Act the bona fides have not at all to be taken into consideration and it is only the suitability which has to be seen. Further, according to him, the landlord is the

final judge as to which premises are suitable for his needs and the court should not interfere in the same.

First of all I shall deal with the question regarding the scope of revisional jurisdiction of this court. Mr.Bawa has placed reliance on **Miss Kanta Udharam Jagasia Vs. C.K.S.Rao AIR 1998 SC 569** wherein the apex court held that the revisional court should not interfere with the findings of the lower court merely on the ground that on reappreciation of evidence it may have taken another view. There can be no dispute with regard to this position of law. However, each case has to be decided on its own merits. The provisions of Section 16(8) of the Act have earlier also been considered by this court in **Civil Revision 98 of 1991, 1994 (Suppl.) Sim. L.C. 9 Amar Singh Vs. Ram Lal Mohindru** wherein on consideration of entire law V.K.Mehrotra, J. held as follows:-

> "The power of interference by the High Court under proviso to section 16(8) would undoubtedly embrace the power to interfere where there is misappreciation of evidence amounting to the finding being perverse in the sense that no reasonable person would arrive at it on the material on record. It would certainly permit the High Court to interfere if there is miscarriage of justice in a case, judged on the anvil of the various grounds held permissible by judicial pronouncements. But the power of interference would not, in any case, extend to interference with a conclusion of fact arrived at by the Rent Controller, on re-appraisal of the evidence, on the ground that a different view of evidence was possible."

The apex court in **Shiv Sarup Gupta Vs. Dr. Mehar Chand Gupta AIR 1999 SC 2507** was dealing with the revisional powers of the High Court under Section 25-B of the Delhi Rent Control Act. The provisions of Section 25-B are para-materia with

the provisions of Section 16(8) of the present Act. The apex court held as follows:-

> "The revisional jurisdiction exercisable by the High Court under S.25-B (8) is not so limited as is under S. 115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of `whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion for the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller `not according to law' calling for an interference under proviso to sub-sec. (8) of S.25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law."

Under Section 16(8) quoted hereinabove, this court has to satisfy itself that the order made by the Collector is in accordance with law. If according to the court the order is not in accordance with law, the court will definitely have the jurisdiction to interfere in the same. It would be pertinent to mention that under Section 24(5) which is the revisional power of the High Court in cases of orders not falling within the scope of Section 16 of the Act, this court has to satisfy itself with regard to the legality or proprietary of the order passed by the courts below. This court in number of decisions has

held that revisional power of this court under Section 24(5) is wider than the revisional power under Section 115 of the Code of Civil Procedure. Here I am concerned with the revisional powers under Section16(8) of the Act. At the outset it has to be noticed that these revisional powers are to be exercised in respect of those cases where no appeal lies from the order of Rent Controller. The only judicial review available against an order of Rent Controller is by filing a revision under Section 16(8) of the Act. The wording of Section 24(5) and Section 16(8) of the Act is totally different. The legislature was aware that the High Court under Section 24(5) could only satisfy itself with regard to the legality or proprietary of an order passed by an inferior authority. However, in Section 16(8) the legislature empowered the High Court to satisfy that the order made by the Controller under Section 16 of the Act is in accordance with law. In my opinion the revisional powers under Section 16(8) are wider than the revisional powers under Section 24(5) of the Act. Though the powers are revisional in nature and not as wide as appellate powers, the court can go through the evidence to see that the order passed by the Rent Controller is in accordance with law. Keeping in view the above position of law I proceed to examine the facts and material in the present case.

The next question which arises is whether the bona fides of the landlord have to be taken into consideration while dealing with a petition under Section 15(2) of the Act or whether the petition must be decided on the basis of the suitability alone to be adjudged by the landlord himself. I need not deal with all the authorities cited on this aspect of the matter. The matter stands

conclusively decided by a judgment of the apex court in **M/s Rahabhar Productions Pvt. Ltd. Vs. Rajendra K.Tandon AIR 1998 SC 1639.** In this case the apex court was dealing with the similar provisions under Section 14-C of the Delhi Rent Control Act wherein an employee who has retired or is about to retire can obtain immediate possession of the tenanted premises owned by him. The Supreme Court held as follows:-

> "In S.11(1)(e) as also under S. 14-C, it is the requirement of the landlord which constitutes the basis for tenant's eviction. If the requirement has to be genuine and bona fide, under S. 14(1) (e), it cannot be said that merely because the words "bona fide" have not been used in S. 14-C, the requirement of the landlord under S. 14-C may not be bona fide or genuine. No landlord, not even a landlord under S. 14-C, can be permitted to come to Court for eviction of the tenant for his requirement which is not real, genuine or bona fide. The tenant cannot be evicted on a false plea of requirement or "feigned requirement".
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> Proceedings under S. 14-C can be initiated by a landlord who was in the service of the Central Government or Delhi Administration and has retired from service or is likely to retire within one year of the initiation of proceedings, but the retirement or likely retirement of the landlord does not give rise to a presumption that the premises are bona fide required by him. The landlord has also to plead and show that after retirement or likely retirement, no fresh assignment has been taken up or is likely to be taken up by him with the facility of a residential "Quarter". Possession can be recovered by the landlord only for real, genuine and bona fide need and not for "feigned" need."

In view of the settled law there can be no manner of doubt that the need of the landlord must be bona fide. His bona

fides may not be to the extent as required under Section 14 of the Act, but it is obvious that the landlord cannot take advantage of the provisions of Section 15 just to evict a tenant for ulterior motive on grounds which are not made out. His need must be genuine and bona fide and not just a feigned need. It is, no doubt, true that the landlord is the best judge with regard to the suitability of the premises. However, it is not the mere ipsi dixit of the landlord which has to prevail with the court. His assertion that the premises from which he wants a tenant to be evicted are suitable for him must be reasonable and based on some material. In **Dr.B.L.Kapoor Vs. Ram Kumar 1996(2) SLC 315** this court held that it is not within the scope of Rent Controller to find out the suitability of accommodation for running a clinic, but it went on to hold that the landlord has to prove that the accommodation in the possession of the tenant is bona fide required for starting clinic by him. Reliance has been placed by Mr. Bawa on the judgment of the Supreme Court in **Zenobia Bhanot Vs. P.K.Vasudeva and another AIR 1996 SC 601**. In my opinion, that judgment has no applicability to the facts of the present case since the only question raised in that case was whether the specified landlord had a right to recover possession from more than one tenant in the whole building.

At the outset it has to be noticed that the petitioner-landlord in his petition or in the affidavit filed with the petition did not deem it fit to disclose to the court that a number of premises had fallen vacant prior to the filing of the petition. This, in my opinion, shows the dishonest and mala fide intention of the landlord. Any person who approaches the court must approach the court with

clean hands. The requirement of Section 15(2) of the Act is that the landlord must file an affidavit that the petitioner or his/her spouse does not own and possess any other suitable accommodation in the local area. It is obvious that the reason for asking the landlord to file such an affidavit is that if the Rent Controller on the basis of the averments made before him comes to the conclusion that the landlord owns and possesses suitable accommodation, he can dismiss the petition. The landlord can come to the court and state that he is possessed of certain premises but the same are not suitable for his need. He should not, however, hide the fact that he is in possession of the said premises.

While taking this view I am fortified by the judgment of this court rendered in **Jasjit Singh Sodhi Vs. Maharaj Krishan Mahajan 1996 (1) SLC 377** wherein the court held as follows:-

> "In this case it was mandatory upon the petitioner to legally establish that he did not own or possess any other suitable accommodation. The additional facts brought on record clearly establish that owners were in occupation of entire upper storey and a part of lower storey. The owners included father of the petitioner from whom he inherited his share in the building. There is nothing on record to rebut these additional facts especially when these facts were appreciated when learned Counsel for petitioner during the course of arguments agreed for such appreciation without reserving his right for rebuttal. In the aforesaid background, it was imperative upon the petitioner to have established as to what was the entire accommodation available in the building and who were the persons occupying the same. The conduct of the petitioner in not satisfying the legal requirement is clearly indicated, which

> aspect reflected the absence of honest intention on the part of the petitioner. Accordingly it will not be in the interest of justice to consider favourably the claim of the petitioner who has not approached the forum with clean and honest intention. "

Further, in the present case the only ground for eviction of the tenant is that the landlord wants to set up a Veterinary Clinic and according to the landlord for running the Veterinary Clinic he requires at least two rooms. This can be said to be the suitability of the landlord which has to be assessed by the landlord. The landlord further goes on to state that it is only the premises in the ground floor which are suitable since it has open space around them. This may also be held to be a reasonable criteria to adjudge the suitability of the premises.

Now the material on record clearly shows that the landlord did obtain vacant possession of two rooms in the ground floor in the year 2000 and this accommodation has now been sold by him. This court in revisional jurisdiction can take note of subsequent events and in this regard reference may be made to the judgment of the apex court in **Lekh Raj Vs. Muni Lal and others 2001 (2) SCC 762.**

It may be true that accommodation in the possession of the landlord in the top floor of the building is not sufficient or suitable for him to render a Veterinary Clinic. One can also understand his contention that in the middle floor there would be no open space for the animals and, therefore, the middle floor is unsuitable for running the Veterinary Clinic. However, the explanation of the landlord that two rooms in the ground floor which fell vacant and which were later sold off were not suitable since

there was no sufficient open space around them cannot be accepted. In this behalf it may be mentioned that there are conflicting versions of the landlord and tenant with regard to open area around the two sets in the ground floor. Both the sets have identical accommodation. The landlord himself prepared the ground floor plan of the premises which has been exhibited as Ex.PW-1/F. The landlord, however, for reasons best known to him, withheld the sanctioned plan of the Municipal Corporation from the court. In his cross examination he admitted that the building plan had been sanctioned by the Municipal Authorities, but till date he has not cared to produce the same on record. The landlord in the trial court only produced Ex.PW-1/F which is a plan prepared by him. Interestingly in the plan so prepared by him the front elevation shows stair case on both sides of the building, one coming from the road level to the ground floor on the side where the demised premises are situated and another stair-case on the other end of the building coming from the middle floor to the ground floor on the side where the two room set which has now been sold off by the land lord is situated. In the ground floor plan he has shown that there is 3.9 meter space outside the tenanted premises, but the landlord has not cared to show the width of the open space on the other side. This also shows that his intention was not clean. The landlord in fact should have filed the sanctioned plan which would have clearly depicted the open space in front of both the flats. Now the landlord alongwith his reply in CMP No.295 of 2006 has filed another plan which shows that there is open space outside the two room set which he has sold. This plan clearly shows that there is an

open space of 2.90 meters (approximately 10 feet) x 6.58 meters (approximately 21 feet) on the valley side and 7.98 meter (approximately 26 feet) x 1.6 meters (approximately 5 feet) on the other side. This space is also sufficient for the purpose of running a Veterinary Clinic. The total open space works out to 31.85 square meters which is about 320 Sq. feet. It must be noticed that the approach to the ground floor is only through a staircase and, therefore, large animals such as cows, buffalos and horses could not have been taken down the stairs. The only animals which could be treated in the clinic would be dogs, cats or smaller animals. Space of 320 Sq. feet is more than enough for such purpose. The landlord in fact before the Rent Controller tried to show that there was virtually no open space outside the flat which he has now sold. This is apparently false.

The Rent Controller only on the ground that the tenanted premises had sufficient open space in front of it, came to the conclusion that these were the only suitable premises for running a Veterinary Clinic. This finding of fact of the Rent Controller is based on no evidence and on the face of it is incorrect. The landlord withheld the best evidence i.e. the sanctioned plan and even if the plan filed by him before this court is accepted, it is clear that the open area in front of the premises which he has sold is almost 320 Sq. feet which is more than sufficient to meet his requirement.

It is clear that the need of the landlord was not bona fide and his assertion that it is only the tenanted premises which are suitable for his requirement was made with the mala fide

intention of evicting the tenant. While taking this view I am also supported by the fact that admittedly the petitioner-tenant is paying the lowest rent in the premises. She is the oldest tenant. There has been previous litigations between the landlord and the tenant and there can be no manner of doubt that the landlord wants that the tenant should be evicted. He obtained possession of many rooms and again rented them out without starting any clinic. He in fact obtained possession of two rooms in the year 2000 with open space. He still did not deem it fit to start a clinic and in fact sold the vacant premises. It is thus clear that the need of the landlord is not bona fide.

Consequently the revision petition filed by the tenant is accepted. The order of the Rent Controller, dated 15.1.2000 is held to be not in accordance with law. The same is set aside and the petition for eviction filed by the landlord is dismissed. No costs.

CMP Nos. 384 of 2001 and 295 of 2006 for placing on record subsequent facts are allowed in the aforesaid terms.

August 31, 2006(K) (Deepak Gupta), Judge