

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 485 of 2002.

Judgment reserved on 17th July, 2007.

Date of Decision: 31st July, 2007.

Smt. Ram Piari and Ors.

.....Petitioners.

versus

Melo Devi and Ors.

.....Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. K.D. Sood, Advocate.

For the Respondents: Mr. N.K. Thakur, Advocate.

Dev Darshan Sud, Judge.

This is the tenants' revision against the judgment of the learned Appellate Authority affirming the judgment and findings of the learned Rent Controller ordering the eviction of the petitioners-tenants under Section 14 of the H.P. Urban Rent Control Act (hereinafter referred to as 'the Act').

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

The respondents are the land lords who instituted a petition under the Act claiming an order for eviction of the land with a small wooden khokha (temporary structure) put on the land by the petitioners-tenants on the ground of non- payment of rent and requirement of the rented land for construction of non residential building. The land lords have averred that the petitioners-tenants had not paid or tendered the rent of the demised premises from 1.7.1987 to 31.3.1992 amounting to Rs. 31,350 @ 550/- per month. Interest on the amount was also claimed. The second ground prayed for ejectment under the Act is that the land is required by the respondents- landlords for the purpose of construction on the land, which construction could not be carried out without the premises being vacated.

The petition was resisted on a number of grounds by the respondents. The learned Rent Controller framed as many as 11 issues. On the issue of non payment of rent, the learned Rent Controller held as a fact that the petitioners-tenants were in arrears of rent. On the question of re-construction, after considering the evidence on record and Section 14 (3) (c) of the Act held that the land was required bonafide by the land lord for the purpose of reconstruction and that such reconstruction could not be carried out without the land being vacated. While dealing with the issue of bonafide of the land lords, the learned Rent Controller appreciated the evidence on the record in the nature of funds available with the petitioners, plan by the Municipal Council, Una Ext. PW-6/B. The learned Rent Controller concluded as a fact that the petition was not actuated by malafidies and that the demand of the land lords was bonafide.

An appeal carried to the learned Appellate Authority proved unsuccessful. A number of points were urged before the learned Appellate Authority for consideration. Affirming the findings of the learned Rent Controller, learned Appellate Authority held that the findings of the learned Rent Controller on the question of rate of rent payable were not correct and that rent is only 135/- per month. The findings to this effect was modified. On the other issue regarding the requirement of the land lords, the learned Appellate Authority held that from the evidence adduced by the parties, the ground of bonafide requirement for reconstruction of a nonresidential building on the rented land, had been successfully established by the land lords. The Appellate Authority noticed that the land was situated in the heart of the commercial hub in Una Hamirpur Road, immediately opposite the Bus Stand at Una and that this area is occupied by the traders and is busy commercial area. The learned Appellate Authority also considered the plan Ext.PW-6/A, availability of funds, and the fact that from the evidence on record, no malafidies had been established by the respondents. The appeal was accordingly dismissed with the modification in the rate of rent chargeable.

In this Revision, learned counsel for the petitioners has assailed the judgment on a number of grounds. The learned counsel submits that the land lords (in this case land ladies) had failed to plead and prove that the land was required bonafide for construction and such activity could not be carried out without the land being vacated. It was submitted that no eviction could be ordered for the construction of a non residential building. It was also submitted that ingredients of Section 14 (3) (c) had neither been pleaded nor proved, the petition deserves to be

dismissed. These submissions of the learned counsel for the petitioners cannot be accepted. There is nothing on the record to show that land lords were actuated by malafidies or that the petition had been moved with some ulterior motive. On the question of pleadings, para 18 of the petition is clear and precise . All ingredients have been pleaded. The grounds are reproduced hereunder:-

“18 (a) The respondents have not paid or tendered the rent of the premises in dispute due from 1.7.1987 to 31.3.1992 amounting to Rs. 31,350/- at the rate of Rs. 550/- per month rent and interest at the rate of 9% per annum amounting to Rs. 6701.00 i.e. total amount Rs. 38.0,51.00.

(b) The rented land is required for own use by the applicants.

(i) The applicants are not occupying in the Urban Area concerned any other rented land for the purpose of business except very small piece of owned vacant land in self possession under wooden khokha.

(ii) The applicants have not vacated such rented land without sufficient cause within five years of the filing of the application in the Urban area concerned.

(C) The applicants require the rented land for construction of non residential building. The applicant wants to construct two shops with stores at the basement and two shops on the ground floor with stair case as mentioned in the proposed site plan duly sanctioned by the HP Town Planning Department and MC Una. Such construction cannot be carried out until and unless the premises in dispute i.e. the rented land is vacated. The claim is very genuine and bonafide. The applicants have got the funds to spend for the construction for establishment of business.”

It cannot be said in the circumstances that the eviction is being ordered only on the whims and fancies of the land lords. Nothing

has been pointed out from the record to show that either the land lords had no funds to construct the building or had permission to make such construction. This would prima facie indicate that the requirement of the land lords was not bonafide and that the land lords had been actuated by malafidies. On the evidence on record and its appreciation, I do not find that there is any perversity or that the findings which have been arrived at is against the established record. Two courts having found against the petitioners, this Court in revisional jurisdiction cannot upset the findings merely because a different interpretation after appraisal on facts is arrived at. Learned counsel for the petitioners has placed reliance in **Amro Devi vs. Ajay Kumar Sood, AIR 1994 HP 81** and **Munna Devi vs. Daropati Devi and others 1990 (1) Rent Law Reporter 23** in support of his contention that in the absence of pleadings and proof in accordance with the mandatory statutory requirements of the Act, no eviction can be ordered. Learned counsel submits that the essential pleadings and evidence were lacking and therefore, no relief can be granted. On the question of revisional jurisdiction of this Court under the provisions of the Act, learned counsel submits that concurrent findings of fact would be open for scrutiny in revision. There is no dispute with this proposition of law which has been urged by the learned counsel for the petitioners. Of course, concurrent findings of fact can be interfered with provided they are vitiated due to non compliance of mandatory provisions of law or it is based on no evidence at all.

Reference to the pleadings in the petition shows that there are clear averments made by the land lords that the land is required bonafide for reconstruction and that such reconstruction cannot be carried

out without the land being vacated. It is further submitted that the land lord have not vacated any other land or premises within the municipal limits without sufficient cause.

I have gone through the record. I do not find any perversity in the appreciation of evidence or lack of pleadings contrary to the mandatory requirements of law. There is nothing on the record to show that such a requirement has not been pleaded or proved.

Learned counsel for the respondents has placed reliance on **Madhva Nand and another vs. Nand Lal and another AIR 1987 HP 89** a case under the Act wherein it was held that bonafide requirement for reconstruction of commercial premises is permissible provided bonafidies are established by the land lord. He submits that Hon'ble Supreme Court in **Jagat Pal Dhawan vs. Kahan Singh and others (2003) 1 SCC 191** a case under the provisions of Act, Hon'ble Supreme Court has held that:-

“6. Section 14 (3) (c) provides *inter alia* that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of tenancy premises in case of any building or rented land being required bona fide by him for the purpose of building or rebuilding which cannot be carried out without the building or rented land being vacated. The provision does not have as an essential ingredient thereof and as a relevant factor the age and condition of the building. The provision also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of the tenant. However still, suffice it to observe, depending on the facts and circumstances of a given case, the court may look into such

facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the bonafides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be bona fide.”

He submits that the land was rented out to the respondent and even though a commercial khokha (temporary shed) may have been constructed that would make no difference and it would be covered by the term “building”. He placed reliance on **A. Satyanarayan Shah vs. M. Yadgiri (2003) 1 SCC 138** holding, inter alia that:-

“9. On the authority of the above said decided cases, it can be concluded that the term “building” has to be interpreted liberally and not narrowly. In our opinion, a wooden structure, which is in the nature of a permanent structure standing on the land and which has walls and roof though made of wood, would fall within the definition of building as defined in clause (iii) of Section 2 of the Act. In the context in which the term “building” has been used and keeping in view the purpose of the Act, the term ”building” as defined, ought to be so interpreted as to include therein a structure having some sort of permanency and capable of being used for residential or non residential purpose.”

Learned counsel has argued that eviction order has to follow once it is established that the requirement is bonafide and not whimsical. He places reliance on **S. Venugopal vs. A. Karruppusami and another (2006) 4 SCC 507** in which the concept of

bonafide requirement under the T.N. Buildings (Lease and Rent Control) has been considered:-

“10. It is true that in granting permission under Section 14 (1) (b) of the Act, all relevant materials for recording a finding about the requirement of the landlord for demolishing the building and reconstruction of a new building, have to be taken into account. The Rent Controller reached the conclusion that the landlord bona fide requires the premises for demolition and reconstruction of a new building. This court has observed in *Vijay Singh and Others vs. Vijayalakhmi Ammal, (1996) 6 SCC 475*, that the Court must take into account the bona fide intention of the landlord, the age and condition of the building, and the financial position of the landlord to demolish and erect a new building. These are some of the illustrative factors which have to be taken into account and, they are by no means conclusive.

11. In the instant case, we find that the property owned by the landlord, whatever may have been its value in the past, has acquired commercial value and, therefore, the landlord wishes to demolish the old single storey structure and to construct a multi-storyed building which may fetch him higher rent, apart from serving his own needs. The landlord had already applied to the competent authorities and got the plans approved. Taking into consideration all these reasons, we are convinced that the landlord bona fide intends to demolish the old building and to construct a new one. Raising funds for erecting a structure in a commercial centre is not at all difficult when a large number of builders, financiers as well as banks are willing to advance funds to erect new structures in commercial areas. This is apart from the fact that the landlord has himself indicated that he was willing to invest a sum of Rs. One and a half

lakh of his own, and he owns properties and jewellery worth a few lakhs.

12. In these circumstances, we are satisfied that the landlord established his case that he required the premises for its demolition and erection of a new building on the same site.

13. The learned counsel for the respondents submitted that the plea of bona fide personal need for own occupation was not made out in the instant case since the landlord really wanted to evict the respondents from the premises in question with a view to demolish the premises and construct a new building. It is not necessary for us to consider this submission because in any event a case for eviction under Section 14 (1) (b) of the Act has been made out.

14. We hold that the High Court was in error in setting aside the concurrent findings recorded by the Rent Controller and the appellate tribunal. We, therefore, allow these appeals, set aside the judgment and order of the High court and restore that of the Rent Controller as affirmed by the appellate tribunal.”

He submits that his case is squarely covered by the law as laid down above, the landlord having established all the necessary ingredients required for getting an order of eviction in his favour in accordance with law. Learned counsel further places reliance on **Kailash Chand and another vs. Dharam Dass (2005) 5 SCC 375** a case under the Himachal Pradesh Urban Rent Control Act holding that the scope of revision under the Act is limited only to ascertaining as to whether the provisions of the Act could not be used for having the bonafide

requirement of the land lord negated. He places reliance on the following observations of the Court:-

“25. Undoubtedly, the Himachal Pradesh Urban Rent Control Act, 1987 has been enacted for the purpose of providing for the control of rents and evictions because of paucity of accommodation in urban areas. The Rent Control Legislations, generally aim at preventing rack-renting and resorting to evictions by unscrupulous and greedy landlords, who take advantage of the shortage in availability of accommodations in cities and dictate their terms to the tenants and if they do not follow the dictates, subject them to eviction. The Rent Control Legislations are generally heavily loaded in favour of the tenants and the provision dealing with which the courts at times lean in favour of the landlords is the one which permits the landlord to seek eviction of the tenant on the ground of requirement for his own occupation, residential or non-residential. There are weak amongst the tenants as also amongst the landlords. (*See Joginder Pal's case, SCC supra, paras 9 and 32*) Take the case of a landlord knocking the doors of the court seeking its assistance for a roof over his head or for a reasonably comfortable living, when he is himself either in a rented accommodation or squeezing himself and his family members in a limited space, while the tenant protected by the Rent Control Law is comfortably occupying the premises of the landlord or a part thereof. Provisions like Section 14(3)(a)(i) of the Act should be so interpreted as to advance the cause of justice instructed by the realities of life and practical wisdom. While the tenant needs to be protected, the courts would not ordinarily deny the relief to the landlord, who genuinely and bona fide requires the premises in occupation of the tenant for occupation by himself or for the members of his family, unless they feel convinced that

the so-called requirement of the landlord was a ruse for getting rid of an inconvenient tenant or was otherwise mala fide and did not fall within the four corners of the ground for eviction provided by the law.”

It was submitted that the purpose of the Act was not mere protection of the rights of the tenants. The rights and requirements of the landlord have also to be enforced. In **Atma S. Berar vs. Muththiar Singh** **2003 (2) SCC 3** it was held:-

“9. *In Ram Dass Vs. Ishwar Chander & Ors., (1988) 3 SCC 131, M.N. Venkatachaliah, J. (as His Lordship then was) speaking for the three-Judges Bench, said (SCC pp. 134-35, para 11)*

"Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as "bona fide requirement", "reasonable requirement", "bona fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection

afforded by law to the tenant is not rendered merely illusory or whittled down."

10. In *Gulabbai Vs. Nalin Narsi Vohra & Ors.*, (1991) 3 SCC 483, reiterating the view taken in *Bega Begum Vs. Abdul Ahad Khan*, (1979) 1 SCC 273, it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

11. Recently, in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222, this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself ____ Whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest? If the answer be in positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self occupation than what has been already stated in the three precedents.

13. Simply because a different Judge of Court of facts could have been persuaded to change opinion and draw a different inference from the same set of facts is not the jurisdiction of a revisional authority to upset pure finding of fact. Precedents galore were cited by the learned senior counsel for the parties dealing with jurisdiction of revisional court to interfere with findings of fact. In all

fairness to the learned counsel, we may refer to a few of them.

14. The object of conferring revisional jurisdiction on the High Court, by sub-Section (5) of Section 15 of the Act, is to enable it satisfying itself as to the legality or propriety of an order made by the Controller or the proceedings before him. In *Ram Das Vs. Ishwar Chander and Ors.* (1988) 3 SCC 131 it was held that the nature and scope of revisional jurisdiction conferred on the High Court shall have to be determined on the language of the Statute investing the jurisdiction. In *Prativa Devi Vs. T.V. Krishnan* (1996) 5 SCC 353 a three-Judge Bench held that the revisional power referable to Section 25-B(8) of Delhi Rent Control Act, 1958 is not as narrow as the revisional power under Section 115 of the CPC and it is also not so wide as an appellate power. Having kept the legal principles in view and on an objective determination and on a proper appreciation of the evidence in the light of the surrounding circumstances a conclusion as to the need of the demised premises for user by the landlord and his bona fides shall not be liable to be interfered with in exercise of revisional power. In *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 this Court made a comparative study of the provisions contained in section 115 CPC in juxtaposition with Section 25-B(8) of Delhi Act and held that the High Court cannot appreciate or reappreciate evidence dictated by its mere inclination to take a different view of the facts as if it were a court of facts. A conclusion arrived at which is wholly