

ASHOK KUMAR

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v.

VED PRAKASH & ORS.

(Civil Appeal No. 8417 of 2009)

DECEMBER 17, 2009

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[TARUN CHATTERJEE AND V. S. SIRPURKAR, JJ.]

*Haryana Urban (Control of Rent and Eviction) Act, 1973:*

s. 13 – *Eviction of tenant from non-residential premises on ground of bona fide need of landlord* – HELD: Correct interpretation of bona fide requirement of landlord of a residential building must include a non-residential building as well – Rent Controller and High Court rightly allowed the petition of landlord - Bona fide requirement being for purposes of son of landlord, on landlord's death, question of abatement of eviction proceedings cannot arise at all – Abatement – East Punjab Urban Rent Restriction Act, 1949 – s.13.

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*Precedent:*

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*Decision of Court having regard to a particular enactment*

– HELD: Holds persuasive value while considering constitutionality of a similar provision albeit in a different legislation - *Haryana Urban (Control of Rent and Eviction) Act, 1973.*

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**An order of eviction of the tenant from non-residential premises was passed by the Rent Controller under the Haryana Urban (Control of Rent and Eviction) Act, 1973 on the ground of bona fide need of the landlord. The order was affirmed by the appellate authority and the High Court. In the instant appeal filed by the tenant, the question for consideration before the Court was: whether the landlord would be entitled to evict his tenant from a non-residential premises on the ground of bona fide**

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A requirement under the Haryana Urban (Control of Rent and Eviction) Act, 1973 when s.13 of the Act provides for eviction of the tenant only *in case of residential building?*

**Dismissing the appeal, the Court**

B HELD: 1.1. Long before the Haryana Urban (Control of Rent and Eviction) Act, 1973, s.13 of the East Punjab Urban Rent Restriction Act, 1949 before its amendment, contained provisions for eviction of a tenant from residential as well as non-residential premises. In 1956, the Legislature, by introducing an amendment to the East Punjab Rent Act, deleted the word "non-residential premises" from s.13 with the result that after the amendment, a landlord could not seek eviction of his tenant from non-residential premises for his *bona fide* requirement which was originally available to the landlord. The constitutionality of the said amendment was challenged and this Court declaring the amendment constitutionally invalid, restored the original provisions of the Act, to the effect that landlord can seek eviction of a tenant from a non-residential building as well on the ground of his *bona fide* need. Thus, in view of the decision of this Court, a landlord can seek eviction of his tenant on the ground of *bona fide* requirement not only from residential premises but also from non-residential premises under the East Punjab Rent Act. As regards the plea of appellant that the decision and reasoning concerning East Punjab Rent Act, cannot apply to the question arising in the instant case under the Haryana Rent Act, suffice it to say, there is no reason as to why the decision concerning one legislation cannot hold persuasive value for the Court, while considering the constitutionality of a very similar provision, albeit in a different legislation.[Para 10,11, 15 and 25] [702-D-H; 704-F-G; 708-F]

H *Harbilas Rai Bansal vs. State of Punjab* 1995 (6) Suppl.

SCR 178 = 1996 (1) SCC 1; *Gyan Devi Anand vs. Jeevan Kumar* 1985 (1) Suppl. SCR 1 = (1985) 2 SCC 683; *Rakesh Vij vs. Dr. Raminder Pal Singh Sethi and others* 1985 (1) Suppl. SCR 1 = 2005 (8) SCC 504; *Mohinder Prasad Jain vs. Manohar Lal Jain* 2006 (2) SCR 513 = 2006 (2) SCC 724, relied on. A

\* *State of Madhyapradesh v. G.C.Mandawar* 1955 SCR 158 = AIR 1954 SC 493 – cited. B

1.2. The correct interpretation of *bona fide* requirement of a landlord of a residential building must include a non-residential building as well. It cannot be said that an eviction petition filed by a landlord for eviction of a tenant cannot be filed u/s 13 of the Act when such eviction proceeding relates to a non-residential building. [Para 20 and 21] [707-A-B; 707-F] C

\* *Satyawati Sharma (Dead) by LRs. vs. Union of India and another* 2008 (6) SCR 566 = 2008 (5) SCC 287, relied on. D

\* *Common Cause vs. Union of India and Ors.* JT 2003 (Suppl.2) SC 270, *Padmasundara Rao and Ors. vs. State of Tamil Nadu and Ors.* (2002) 3 SCC 533, *Union of India vs. Deoki Nandan Aggarwal* 1991 (3) SCR 873 = AIR 1992 SC 96, *Naveen Kohli vs. Neethu Kohli* 2006 (4) SCC 558; and *Vishnu Dutt Sharma vs. Manju Sharma* 2009 (3) SCALE 425, cited. E F

1.3. It is not in dispute that the original landlord died during the pendency of the revision in the High Court. Looking at the averments made in the eviction petition, where the original landlord has categorically pleaded that the requirement was for his son who has become the landlord because of the death of the original plaintiff, the question of abatement of the eviction proceedings cannot arise at all. That apart, the plea regarding abatement of G

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A **eviction proceedings due to death of original landlord was not even raised by the tenant before the High Court when the original landlord died and the respondents were substituted in his place. [Para 26] [708-G-H; 709-A-C]**

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**Case Law Reference:**

	<b>1995 ( 6 ) Suppl. SCR 178 relied on</b>	<b>para 11</b>
	<b>1985 ( 1 ) Suppl. SCR 1 relied on</b>	<b>para 13</b>
C	<b>1985 ( 1 ) Suppl. SCR 1 relied on</b>	<b>para 15</b>
	<b>2006 (2 ) SCR 513 relied on</b>	<b>para 17</b>
	<b>JT 2003 (Suppl.2) SC 270 cited</b>	<b>Para 18</b>
D	<b>(2002) 3 SCC 533 cited</b>	<b>Para 18</b>
	<b>1991 ( 3 ) SCR 873 cited</b>	<b>Para 18</b>
	<b>2006 (4) SCC 558 cited</b>	<b>Para 18</b>
	<b>2009 (3) SCALE 425 cited</b>	<b>Para 18</b>
E	<b>2008 (6 ) SCR 566 relied on</b>	<b>para 20</b>
	<b>1955 SCR 158 cited</b>	<b>para 24</b>

CIVIL APPELLATE JURISDICTION : Civil Appeal No. F 8417 of 2009.

From the Judgment & Order dated 5.3.2007 of the High Court of Punjab and Haryana at Chandigarh in C.R. No. 3943 of 2005.

G Gagan Gupta for the Appellant.

G.D. Rustagi and Anis Ahmed Khan for the Respondents.

The Judgment of the Court was delivered by

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TARUN CHATTERJEE, J. 1. Leave granted. A

2. This appeal has been filed by the tenant/appellant from the judgment and final order dated 3rd of March, 2007 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision Case No.3943 of 2005 whereby the High Court had dismissed the civil revision case and affirmed the order of the appellate authority as well as of the Rent Controller thereby directing eviction of the tenant/appellant from a shop constructed on the ground floor at Plot No.12, bearing Municipal No.179 (a), Ward No.3, New Anaj Mandi, Sohna, District Gurgaon (Haryana) (hereinafter referred to as the 'tenanted premises'). B

3. The case made out by the original landlord Mr. Om Prakash (since deceased) in his eviction petition can be narrated as follows: C

The tenanted premises was let out to the tenant/appellant in the year 1982 in which the appellant was carrying on the business of Commission Agent. The case of *bonafide* requirement as pleaded by the original landlord was that the original landlord and his two sons were carrying on the same business as that of the appellant and as the original landlord had decided to settle his elder son Ved Prakash in the tenanted premises in the business of Commission Agent and the younger son Arun Kumar in another shop occupied by another tenant, he was constrained to file the eviction petition on the ground of *bonafide* requirement and a separate eviction proceeding was also filed against the other tenant by the original landlord. In spite of repeated reminders to the tenant/appellant to vacate the tenanted premises, the tenant/appellant having failed to vacate the same, the original landlord was constrained to file the eviction proceeding against the tenant/appellant. D

4. The tenant/appellant entered appearance and contested the eviction proceeding denying the material allegations made G

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- A in the application for eviction. In his written objection, the tenant/appellant had categorically denied that the respondent had any *bona fide* requirement for use and occupation of his son for starting a business of Commission Agent in the tenanted premises. Accordingly, the tenant/appellant sought for dismissal of the eviction petition.

- 5. The Rent Controller, Gurgaon, by his order dated 31.05.2004, had allowed the application for eviction *inter alia* holding that the original landlord had successfully proved his *bona fide* requirement of the tenanted premises. Feeling aggrieved by this order of the Rent Controller, an appeal was taken by the tenant/appellant before the Appellate authority which affirmed the findings of the Rent Controller, Gurgaon and dismissed the appeal of the tenant/appellant. Again feeling aggrieved by the order of the appellate authority, a revision petition was filed by the appellant before the High Court of Punjab and Haryana which was dismissed by the impugned order affirming the findings of the Appellate Authority as well as of the Rent Controller, Gurgaon. Be it mentioned herein that the original landlord, as noted hereinearlier, died during the pendency of the Civil Revision case in the High Court and the present respondents were substituted in his place.
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6. Before us, the pivotal issue that was seriously raised by the learned counsel for the appellant was as follows: -

- F (i) Whether the landlord would be entitled to evict his tenant from a non-residential premises on the ground of *bona fide* requirement under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the 'Act') when Section 13 of the Act provides for eviction of the tenant only *in case of residential building* if the landlord requires it for his own occupation, and is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of
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East Punjab Urban Rent Restriction Act, 1949 in A  
the said urban area?

7. On the aforesaid issue, we have heard the learned counsel appearing for the parties and examined the materials on record. According to the learned counsel for the appellant, since Section 13 of the Act does not permit a landlord to evict a tenant who is in occupation of a non-residential building on the ground of *bonafide* requirement, the question of evicting the appellant from the tenanted premises under Section 13 of the Act would not arise at all. This submission of the learned counsel for the tenant/appellant was seriously contested by the learned counsel for the respondent. Before we take up this issue for our consideration, it would be appropriate to refer to Section 13 of the Act which runs as under :-

*"Eviction of tenants-*

- (1) A tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with the provisions of this section.
- (2) .....(Omitted because it is not necessary for our purpose)
- (3) A landlord may apply to the controller for an order directing the tenant to put the landlord in possession-
  - (a) *in case of residential building*, if-
    - (i) he requires it for 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 1949 Act in the said urban area."

8. A plain reading of Section 13 of the Act would show that H

- A it permits a landlord to evict a tenant only from a residential premises and not from the non-residential premises. It is an admitted position that the landlord/respondent sought to evict the tenant from the tenanted premises for his own use and occupation, which was let out for non-residential purposes.
- B 9. The Act was enacted by the Legislature in order to control the increase of rent of certain buildings and rented lands situated within the limits of urban areas and the eviction of tenants therefrom. Section 2 (g) of the Act defines "residential building" which means any building which is not a non-residential building. Section 11 of the Act prohibits conversion of a residential building into a non-residential building. Section 13 of the Act deals with eviction of a tenant.
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- D 10. At this stage, we need to consider a different Act namely, the East Punjab Urban Rent Restriction Act, 1949 (in short "East Punjab Rent Act"), which was enacted long before the Act of 1973, with which, we are concerned as we find that somewhat similar provisions have been enacted in both the Acts by the Legislature. Section 13 of the East Punjab Rent
- E Act, before its amendment, contained provisions for eviction of a tenant from a residential as well as from a non-residential premises. However, the Legislature, by introducing an amendment to the East Punjab Rent Act, had deleted the word "non-residential premises" from Section 13 of the Act, from
- F which it will be clear that the landlord cannot seek eviction of a tenant after amendment from a non-residential premises for his *bonafide* requirement which was available to the landlord before the introduction of the Amendment Act in 1956. This amendment was introduced by East Punjab Rent Restriction (Amendment) Act 1956, which came into force on 24th of September, 1956.
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- H 11. The constitutionality of the Amendment Act of 1956 by which deletion of the word "non-residential premises" for eviction of a tenant on the ground of *bonafide* requirement under Section 13 of the East Punjab Rent Act came under challenge

in this Court in the case of *Harbila Rai Bansal vs. State of Punjab* 1996 (1) SCC 1, in which this Court held the aforesaid amendment of the East Punjab Rent Act as unconstitutional and directed as follows :-

"We allow the appeal, set aside the impugned judgment of the High Court, declare the above said provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act which were operating before coming into force of the amendment. The net result is that a landlord under the Act can seek eviction of a tenant from a nonresidential building on the ground that he requires it for his own use. The parties to bear their own costs."

12. After the amendment of Section 13 of the East Punjab Rent Act, by which the word "non-residential premises" was deleted by judicial pronouncement, a landlord seeking eviction of his tenant on the ground of *bona fide* requirement would be entitled to file such eviction proceeding not only in respect of a residential premises, but also from a non-residential premises.

13. While deciding the constitutionality of the aforesaid amendment of the East Punjab Rent Act, this Court in the aforesaid decision namely, *Harbila Rai* (supra) had also considered another decision of this Court in *Gyan Devi Anand vs. Jeevan Kumar* (1985) 2 SCC 683. In *Gyan Devi Anand* (supra), this Court also felt the difficulty of the landlord to evict his tenant in respect of a non-residential premises. While considering this aspect, this Court in that decision observed as under :-

"The legislature in its wisdom did recognise this fact and the Legislature has provided that *bona fide* requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of

- A commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need *bona fide* the premises for his own use under changed conditions in some future date should not in fairness be deprived of his right to recover the commercial premises.
- B *Bona fide* need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We therefore, suggest that Legislature may consider the advisability of making the *bona fide* requirement of the landlord a ground of eviction in respect of commercial premises as well."
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14. From the aforesaid observation of this Court, it is therefore clear that this Court in 1985 felt this difficulty and suggested that suitable legislation or amendment to the Statute should be made by the Legislature.

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- 15. In *Gian Devi* (supra), the question that was raised before the Constitutional Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. While answering this question in *Gian Devi Anand* (supra), this Court answered the question in the affirmative. The observations that were made by this Court in *Gian Devi Anand* (supra), as noted hereinbefore, were made, keeping in view the hardship being caused to the landlords of non-residential premises, who cannot evict their tenants even on the ground of *bonafide* requirement for personal use. Accordingly, in view of our discussions made hereinabove and in view of the observations made by this Court in the aforesaid two decisions, the only conclusion that can be drawn is that a landlord can seek eviction of his tenant on the ground of *bonafide* requirement not only from residential premises but also from a non-residential premises under the East Punjab Rent Act.
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16. This view was also approved by a Three-Judge Bench decision of this Court in *Rakesh Vij vs. Dr. Raminder Pal Singh Sethi and others* 2005 (8) SCC 504 in which, it has been

held that eviction of a tenant who is occupying a non-residential premises of a landlord, on the ground of *bona fide* requirement under the East Punjab Rent Act, would be available in which the decision in *Harbilas*' case (supra) was followed. A

17. Following the decision of the *Harbilas*' Case (supra) and the other decisions referred to hereinabove, this Court in a recent decision reported in *Mohinder Prasad Jain vs. Manohar Lal Jain* 2006 (2) SCC 724 held that a landlord is entitled to seek eviction of a tenant under the Act from a non-residential building on the ground that the landlord *bona fide* required the tenanted premises for his own use and occupation. In para 5 of the said decision in that case, this Court observed as under :- B

"We may notice that this Court in *Harbilas Rai Bansal v. State of Punjab* held such a provision to be unconstitutional, whereas in *Gian Devi Anand v. Jeevan Kumar* somewhat different note was struck. The question recently fell for consideration before a three-Judge Bench of this Court in *Rakesh Vij v. Dr. Raminder Pal Singh Sethi* wherein this Court upheld the ratio laid down in *Harbilas Rai Bansal* (supra) stating: C

We allow the appeal, set aside the impugned judgment of the High Court, declare the abovesaid provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act which were operating before coming into force of the amendment. *The net result is that a landlord "under the Act" can seek eviction of a tenant from a non- residential building on the ground that he requires it for his own use.*(Emphasis supplied)" D E

18. In view of the aforesaid decision of this Court, which followed the earlier decisions although on different Rent Acts, we need not delve on this question any further but our Judgment will not be completed if we do not consider the decisions cited F G H

- A by the learned counsel on behalf of the appellant. As noted hereinearlier, the learned counsel for the appellant submitted before us that since the Act only permits a landlord to evict a tenant on the ground of *bonafide* requirement from a residential building and nothing has been stated in that provision or right
- B has been created on the landlord to evict a tenant from a non-residential building on the ground of *bonafide* requirement, it is not open to the landlord to apply for eviction of a tenant from a non-residential premises on the ground of *bonafide* requirement when such ground was not specifically conferred
- C by the Legislature under Section 13 of the Act or to the landlord to apply for eviction of the tenant from the non-residential premises. Therefore, according to the learned counsel for the appellant, the decision in *Mohinder Prasad Jain* (supra), which was delivered under the Act, is not a good law and, therefore,
- D the matter may be referred to a larger Bench for consideration of this question. In support of this submission, the learned counsel for the appellant had cited a number of decisions namely, *Common Cause vs. Union of India and Ors.* JT 2003 (Suppl.2) SC 270, *Padmasundara Rao and Ors. vs. State of Tamil Nadu and Ors.* (2002) 3 SCC 533, *Union of India vs. Deoki Nandan Aggarwal* AIR 1992 SC 96, *Naveen Kohli vs. Neethu Kohli* 2006 (4) SCC 558 and *Vishnu Dutt Sharma vs. Manju Sharma* 2009 (3) SCALE 425.

19. We have carefully considered the aforesaid decisions

- F of this Court, as noted hereinearlier. It is difficult to accept that the decisions cited by the learned counsel for the appellant in support of his aforesaid submission will lead us to hold that the landlord shall not be entitled to evict a tenant from a non-residential premises for *bonafide* requirement, when such
- G ground for eviction has been made available only in case of residential premises. In our view, the view taken in *Mohinder Prasad Jain* (Supra) cannot be said to be a bad law on the ground that it was really an usurpation of legislative duties on the part of the Court by any stretch of imagination.

20. Therefore, the decisions cited by the learned counsel for the appellant cannot be relied upon for the purpose of holding that the Court is not conferred with the power to entertain an eviction petition against a tenant relating to non-residential premises as, in our view, the correct interpretation of *bonafide* requirement of a landlord of a residential building must include a non-residential building as well in view of the decisions referred to hereinabove. In this connection, we may also add that it may be pertinent to note that in the case of *Satyawati Sharma (Dead) by LRs. vs. Union of India and another* 2008 (5) SCC 287, a similar provision in the Delhi Rent Act, 1958 was found to be unconstitutional. In this connection, reference may be made to para 38 of the said decision, which reads as under:-

“38. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required *bona fide* by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter’s right to seek eviction of the tenant from the premises let for residential purposes only.

21. Thus, in view of the overall discussions made hereinabove, we are unable to accept the submission of the learned counsel for the appellant that an eviction petition filed by a landlord for eviction of a tenant cannot be filed under Section 13 of the Act when such eviction proceeding relates to a non-residential building.

22. Before parting with this Judgment, a short submission of the learned counsel for the appellant needs to be dealt with. According to the learned counsel for the appellant, the case of *Harbilas* (supra) and *Rakesh Vij* (Supra) were rendered on the amendments made to East Punjab Rent Act, whereas the case

A of *Mohinder Prasad Jain* (supra) and the issue before us concerned removing a classification which existed from the inception of the legislation.

B 23. Therefore, according to the learned counsel for the appellant, a decision and reasoning concerning East Punjab Rent Act cannot apply to a question with respect to the present Act because both the legislations are products of different legislatures and the rationale behind one cannot be compared at par with that of the other.

C 24. The learned counsel for the appellant, in support of this contention, relied on a decision of this Court in the case of *State of Madhyapradesh v. G.C. Mandawar*, AIR 1954 SC 493 and strong reliance on para 9 of this decision was pressed by the learned counsel for the appellant, which may be quoted :-

D Paragraph 9: "It is conceivable that when the same Legislature enacts two different laws but in substance they form one legislation, it might be open to the Court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are by different Governments and by different legislatures."

E 25. There is no quarrel in the aforesaid principle laid down by this Court in the aforesaid decision. However, we do not see why the decision concerning one legislation cannot hold persuasive value for the Court, while considering the constitutionality of a very similar provision, albeit in a different legislation.

F G 26. It is not in dispute that the original landlord died, as noted herein, during the pendency of the Civil Revision case in the High Court. There is a faint argument of the learned counsel for the appellant that on such date, the requirement of the landlord had perished. In our view, there is no merit in this

submission of the learned counsel for the appellant. Looking A at the averments made in the eviction petition, where the original landlord has categorically pleaded that the requirement was for his son who presently is the landlord because of the death of the original plaintiff, the question of abatement of the eviction proceeding cannot arise at all. That apart, the B submission so made before us by the learned counsel for the appellant was not even raised by the appellant before the High Court where the original landlord died and the present respondents have been substituted in his place.

27. In this view of the matter, we do not find any substance C in the submission of the learned counsel for the appellant. No other question was raised by the learned counsel for the appellant in support of this appeal and accordingly, we do not find any merit in this appeal. The appeal is thus dismissed. D There will be no order as to costs.

R.P.

Appeal dismissed.