

record of the case.

5. The relevant part of impugned order reads thus:-

"I have heard the rival contentions of both the parties and have gone through the case file with minute care. The submissions made by the Ld. Counsel for the applicant regarding the use of tenanted premises by the respondent for the commercial purposes is without any merit. Mere installing the computers in house does not amount to change of use from residential to commercial one. Moreover, the applicant has nowhere mentioned that the respondent is not staying or residing in the said premises. All the dispute is a matter of evidence. It is pertinent to mention here that at the most the respondent can be confronted with regard to his statement as per the provision u/s 148 Evidence act, when he steps into the witness box."

6. In spite of the fact that the Rent Controller noticed that the respondent-tenant has installed computers in the demised premises, yet the prayer has been rejected. Not only this, it is landlord's petition and therefore, it cannot be said that the proceedings are being delayed by him. Moreover, the proceedings are at the initial stage, as petitioner – landlord is leading the evidence.

7. Thus, keeping in view the facts and circumstance of the case, this petition is allowed, impugned order is set aside and the amendment sought by the petitioner is allowed. Let the amended petition be taken on record and thereafter the Rent Controller may proceed in accordance with law by affording an opportunity to the respondent to file reply to the amended petition and frame fresh issues or additional issue, if any.

8. Parties to appear before the Rent Controller on the date already fixed.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Jaswant Singh, J.

CR No.6986 of 2011(O&M)

Decided on: 18.10.2012

Arjun Dass

Petitioner

Versus

Smt. Birinder Kaur & Anr.

Respondents

Present: Mr. Kanwaljit Singh, Senior Advocate with Mr. C.B. Goel, Advocate for the Petitioner (tenant).

Mr. M.L. Sarin, Senior Advocate with Ms. Himani Rani, Advocate for the respondents (landlords).

A. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13 -- Joint owner/possession – Eviction ordered, possession taken, thereafter property partitioned – Subsequent eviction proceedings -- In the earlier petition, possession was taken by the present landlord on behalf of all the owners/landlords – Held, it is an arrangement among the landlords/owners of the property as to which portion of the property

would go to which owner and it does not lie in the mouth of a tenant to dispute the ownership/partition among the owners – Present petition was filed after nearly six months of the oral partition -- Thus the argument that projected need was not bona fide is devoid of any merit and the same is hereby rejected.

(Para 11)

B. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(3)(a)(i) – Use and occupation – Meaning of -- It is not the requirement under law that a landlord must declare as to what are the properties which are under his or her ownership -- Words that have been used by the legislature, in its wisdom, are “use and occupation” -- Thus the only requirement under law for a landlord to disclose in its petition for ejectment is that he is not in use and occupation of any other premises and if it is so, he is duty bound under law to mention the properties so as to entitle himself for relief for ejectment of tenants.

(Para 12)

C. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(3)(a)(i) – Bonafide need – Pleadings -- Landlord is the best judge of its requirement and tenant cannot dictate terms to him and further a technical plea cannot frustrate the proceedings where no prejudice is caused to a tenant -- Although there is another property of “P” which is also a commercial hub -- However, the court or the tenant cannot force a landlord to choose that property as it is the sweet will of the landlord to choose a property of his/her own choice.

(Para 13, 17)

D. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13, 15(5) – Eviction – Revisional Jurisdiction -- If after appreciating the evidence on record another view is possible, High Court cannot interfere and take another view until and unless same is shown to be absolutely perverse and not appealing to a judicious mind.

(Para 15)

E. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13 – Bonafide need -- When a tenant is enjoying fruits of a property for a long time and has gained substantially by working there, he should not disentitle his own landlord from enjoying the fruits of the property by starting their own business, especially when it is proved that the need of the landlord is bona fide.

(Para 15)

Cases referred:

1. Shankar Lal v. Madan Lal & Ors., 2011(1) RCR(Rent) 139.
2. Atma S. Berar v. Mukhtiar Singh, 2003(1) PLR 371(SC).
3. A.K. Jain v. Prem Kapoor, 2009(1) L.A.R. 239 (SC) = 2008(8) SCC 593.
4. Vishal Garg v. Kamaljit Kaur & Ors., 2011(3) L.A.R. 92 (P&H) = 2011(1) RCR(Rent) 389(P&H).

5. Ajit Singh & Anr. v. Jit Ram & Anr., 2009(1) L.A.R. 187 (SC) = 2008(2) RCR(Rent) 328.
6. M/s Jain Type Foundry & Ors. v. Raj Pal Kapoor, 2009(4) PLR 823.

JUDGMENT

JASWANT SINGH, J. –

1. Petitioner(tenant) Arjun Dass is in revision under Section 15 (5) of the East Punjab Urban Rent Restriction Act,1949 (hereinafter referred to as the 'Act'), as applicable to Chandigarh, against the concurrent findings returned by both the courts below, whereby the ejectment petition filed by respondents Birinder Kaur and Naresh Inder Singh Boparai against Arjun Dass(tenant) for eviction of left side portion of ground floor of SCO No.1026-27, Sector 22-B, Chandigarh was allowed by the learned Rent Controller, Chandigarh vide its order dated 28.03.2011 and the findings thereof were affirmed by the learned Appellate Authority, Chandigarh vide its judgment dated 29.10.2011.

2. In brief, facts of the case are that the respondents(landlords) pleaded that the SCO No.1026-1027, Sector 22-B, Chandigarh was earlier jointly owned by Dr. Amrik Singh Chatha and his wife Smt. Jaswinder Kaur Chatha and the respondents, who are related to each other. Upon settlement arrived at orally on 1.3.2000, the portion in occupation of the petitioner(tenant) fell to the share of respondents whereas, the other portion on the ground floor fell to the share of Dr. Amrik Singh Chatha and Smt. Jaswinder Kaur Chatha. It was thus stated that the respondents have become landlords/owners of the premises in which the petitioner is a tenant at the rate of Rs.1300/- per month excluding water and electricity charges.

3. The ejectment was sought by the respondents(landlords) on various grounds, namely, causing material impairment and diminishing the value and utility of the premises and secondly, on ground of bona fide use and occupation of Smt. Pavita Boparai, who is wife of respondent no.2 and daughter in law of respondent no.1 Smt. Birinder Kaur. It was stated that Pavita Boparai is a young and energetic girl of 32 years and does not want to sit idle at home and wants to start a boutique as well as a tiny shop for the sale of gift items from the tenanted premises. It was stated that the premises in question is centrally located, as it is just opposite to ISBT, Sector 17, Chandigarh and is a hub of commercial activities. It was further stated that since the premises is located in the prime location of Chandigarh and any business carried out in the premises is bound to give fruitful result, therefore, it was stated that the present premises is required so that Pavita Boparai could start her own business and gain fruits from the property. It was also mentioned in the petition that the respondents/landlords have not vacated any such or similar premises in the urban area of Chandigarh after the commencement of the Act and neither they are in possession of any non residential premises in the urban area of Chandigarh. Thus prayer for acceptance of the petition for ejectment was made.

4. Upon notice, petitioner(tenant) filed written statement/reply whereby preliminary objection was taken to the effect that there was no relationship of landlord and tenant between respondent no.2 and the petitioner. It was also stated that due to this reason, petition filed by respondent no.2 itself is not

maintainable. It was stated that M/s Naresh Departmental Store is the tenant in the premises and the same was taken from its original owner Smt. Ram Piari wife of late Sh. Amar Nath and it has been paying rent at the rate of Rs.1100/- per month through cheques from January 1979 till date. Thus it was alleged that it is M/s Naresh Departmental Store who is in possession of the tenanted premises and not petitioner Arjun Dass in his individual capacity. It was also mentioned that the partition as alleged by the respondents/landlords is false and concoction of mind so as to get the premises vacated from the petitioner and let it out at a higher rate of rent. It was also alleged that the necessity as has been projected in petition is not at all there for the reason that adjoining portion of the tenanted premises on the ground floor was got vacated by the respondents from Bishamber Dass (tenant of the said portion) on 14.2.2000 and after taking possession, the said shop was let out by the respondents to Seira Enterprises at the rate of Rs.22,000/- per month w.e.f. 1.4.2000. It was also stated that the entire SCO No.1026-27 consists of three floors which is still joint among the owners and no partition has ever been affected among the owners. It was also stated by the tenant that no material additions or alterations have been made by the petitioner(tenant) so as to impair the value and utility of the premises in question. Finally, it was stated in the written statement that the respondents/landlords are also owners of SCO No.491-92, Sector 35, Chandigarh which had been let out by the respondents to various tenants and after vacation by the tenants, has been re-let at enhanced rate of rent to the tenants.

5. Replication was filed wherein entire contents of the petition were reiterated and those of the written statement/reply were denied.

6. From the pleadings of the parties, issues were framed. Both sides lead evidence in support of their respective claims and after appreciating their evidence learned Rent Controller allowed the eviction petition vide its order dated 28.03.2011 on ground of personal necessity only and the findings thereof were affirmed by learned Appellate Authority, Chandigarh vide its judgment dated 29.10.2011. Hence the present revision petition.

7. I have heard learned Counsel for the parties and have also gone through the case file carefully with their able assistance.

8. Learned Counsel for the petitioner(tenant) has argued that the necessity as has been projected in the present petition for ejectment is completely falsified from the fact that Smt. Pavita Boparai has got other properties in her name which have been let out time and again by her to various tenants and thus there is no necessity of Pavita Boparai. It has also been argued that Smt. Birender Kaur has not disclosed regarding this fact in her petition and thus there is material concealment of facts from the court which disentitles the landlords from seeking eviction. It has also been argued by the learned Counsel for the petitioner(tenant) that immediately before filing of the eviction petition, the respondents (landlords) had got the adjoining portion vacated from its tenant Bishamber Dass and thereafter had let out the same to another tenant at the rate of Rs.22,000/- per month & thus the projected need is not bona fide. He further argued that the landlord Birinder Kaur while appearing in the witness box has admitted the fact that she has 1/6th share in SCO No.126-127, Sector 8, Chandigarh which does not find mention in the eviction petition(Annexure P-3). Thus, the petition itself is not

maintainable as there is no fulfillment of ingredients as required under Section 13(3)(a)(i) of the Act. It was finally stated that since the property had remained joint till the year 2006 when the entire share was purchased by respondents, therefore, the plea of partition dated 6.7.2000 is a sham and is only a ploy to wriggle out of the requirements under law and get the property vacated in one way or the other. Learned Counsel for the petitioner(tenant) has relied upon **2011(1) RCR(Rent) 139 Shankar Lal Vs. Madan Lal & Ors.** to argue that it is mandatory for landlord to mention as to what properties are under use and occupation of Pavita Boparai as her need has been projected and if the said requirement is not fulfilled, the petition itself is not maintainable.

9. On the other hand, learned counsel for the respondents (landlords) has argued that the eviction petition has been preferred on the basis of personal necessity by mother-in-law and husband of Pavita Boparai, which clearly states that the premises is required by her for use and occupation so as to start as business of boutique and gift shop so that she can have her own independent income. There is nothing in law so as to preclude a married women from starting a business for her own use and occupation in the prime most area of Chandigarh, when her mother-in-law and husband can provide her with the same. It was also argued by the learned Counsel for the respondent/landlord that it is for the landlord to see as to what premises is better suited for her and it is not for the tenant to dictate terms to the landlord. It was further argued by the learned counsel for the respondent(landlord) that both the courts below have concurrently held that necessity of the landlords is genuine and it is settled position of law that under Section 15(5) of the Act, this court has to only see as to whether there is any error in law or great miscarriage of justice by both courts below while rendering the judgments and if there is none, then no interference is warranted by this court even if on appreciation of evidence another view is possible. To support his argument, learned counsel for the respondents(landlords) has relied upon **2003(1) PLR 371(SC) Atma S. Berar Vs. Mukhtiar Singh.** It was finally argued by learned counsel for the respondents(landlords) that it does not matter if the landlord has not mentioned or disclosed about ownership of his/her other properties in the petition as the same is not the requirement under Section 13(3)(a)(i) of the Act and moreover, the respondents (landlords), when appearing into the witness box has disclosed about all the properties that are owned by her. It was rather argued that the only requirement for landlord is to plead that he is not having possession of any other property for his use and occupation.

10. After hearing learned Counsel for the parties and perusing the record, this Court is of the considered view that present petition is devoid of any merit and the same deserves to be dismissed.

11. It is not in dispute that in the present case in hand, landlords have sought ejectment of the petitioner on the ground that the same is required by Pavita Boparai for her own use and occupation. It is also not in dispute that landlords have alleged an oral partition in the year 1.3.2000 which was allegedly later reduced into writing on 6.7.2000 to say that the tenanted premises has come under their ownership and thus for all practical purposes they have become the landlords for the petitioner(tenant). It is also not in dispute that prior to filing of the present petition, a petition was filed by the present respondents as well as the other landlords, namely, Amrik Singh

Chatha and Jaswinder Kaur Chatha which was for ejectment of Bishamber Dass(tenant) in the adjoining portion of the ground floor of the SCO No.1026-27, Sector 22-B, Chandigarh. However, a perusal of record reveals that in the said petition, possession was taken by the present respondents on behalf of all the owners/landlords and the same is evident from the Vakalatnama as well as the order passed by the learned Court in the said eviction proceedings. Possession was taken in the said proceedings on 14.2.2000 and it is a specific case of the present landlords/respondents that oral partition had taken place on 1.3.2000 which was later on reduced into writing as a memo of partition on 6.7.2000. It would be appropriate to mention here that it is an arrangement among the landlords/owners of the property as to which portion of the property would go to which owner. It does not lie in the mouth of a tenant to dispute the ownership/partition among the owners. It would have been a totally different story if the possession that was taken on 14.02.2000 was taken by the present respondents only on their behalf. However, as has been stated earlier, the possession was taken over by the respondents/landlords on behalf of all the owners. Thus, it becomes quite logical and probable that there might have been some kind of arrangement among the owners to divide the property so that no dispute is raised later on. Present petition was filed on 5.9.2000 i.e. after nearly six months of the oral partition. Thus the argument that projected need was not bona fide raised by learned Counsel for the petitioner(tenant) is devoid of any merit and the same is hereby rejected.

12. The second argument that has been raised by learned Counsel for the petitioner(tenant) that the landlords have not disclosed regarding the ownership of other properties in their ejectment petition (Annexure P-3) and thus there is non compliance of Section 13(3)(a)(i) of the Act and hence on this ground alone, the petition itself is not maintainable is also devoid of merit and misconceived. A perusal of Section 13(3)(a)(i) of the Act would show that it is not the requirement under law that a landlord must declare as to what are the properties which are under his or her ownership. The words that have been used by the legislature, in its wisdom, are "use and occupation". Thus the only requirement under law for a landlord to disclose in its petition for ejectment is that he is not in use and occupation of any other premises and if it is so, he is duty bound under law to mention the properties so as to entitle himself for relief for ejectment of tenants.

13. It is also the case of the petitioner(tenant) that respondents (landlords) were required to plea as to what were the properties under the ownership of Pavita Boparai as they are seeking ejectment for the personal use and occupation of Pavita Boparai. This argument, although seems attractive in the first blush, however, the same is also misconceived. As stated earlier, it is not the requirement under law to plead all these ingredients and even if that were so, it was not required in the present case at all, since Pavita Boparai is not the owner/landlady in respect of SCO in question. She is wife of respondent no.2 and daughter-in-law of respondent no.1 and it is respondents, who are owners/landlords and thus any ingredients that were required to be fulfilled were to be fulfilled by respondents/landlords qua themselves and not qua Pavita Boparai. Thus the argument that there is another property in Sector 35, Chandigarh which belongs to Pavita Boparai and has not been disclosed by the landlords in their petition is of no value. However, it is appropriate to mention here that it has still come in evidence that respondent no.2, his wife

and mother(respondent no.1) do not occupy any such premises nor they have vacated any such premises without reasonable cause and it has also come in evidence that there are many other buildings under the ownership of the respondents/landlords as admitted by PW-1 Birinder Kaur in her cross examination. Although the said facts might have changed the case of the respondents/landlords had it been proved that the said buildings were under their use and occupation but as stated earlier, there is no evidence at all to the effect that these premises were ever under their use and occupation. This court is unable to see as to how any prejudice has been caused to the petitioner due to non pleading of these facts in the petition as it is settled position by now that a landlord is the best judge of its requirement and tenant cannot dictate terms to him and further it has been held by Hon'ble Supreme Court in **A.K. Jain Vs. Prem Kapoor 2009(1) L.A.R. 239 (SC) = 2008(8) SCC 593** that a technical plea cannot frustrate the proceedings where no prejudice is caused to a tenant.

14. It is also appropriate to mention here that had the need of the landlords been not bona fide, then the rate of rent which has remained static since 1976 would have increased manifoldly by now since 1976. If that is not there, then no greed can be imputed to the landlords for seeking eviction on pretext of personal necessity and let out for higher rent.

15. Further, I am in complete agreement with the arguments raised by the learned Counsel for respondents(landlords) to the effect that if after appreciating the evidence on record another view is possible, this Court cannot interfere and take another view until and unless same is shown to be absolutely perverse and not appealing to a judicious mind. I do not find any evidence at all which would show perversity or miscarriage of justice that would lead to a conclusion that might go in favour of the petitioner(tenant). It has also come in evidence that the petitioner(tenant) has bought another property in the same line and a few shops away from the premises in question and has also got a property in his name at Manimajra which is double storeyed commercial building and his son owns a showroom in Swastik Vihar. Thus, even otherwise this Court is of the opinion that when a person/tenant is enjoying fruits of a property for a long time and has gained substantially by working there, he should not disentitle his own landlord from enjoying the fruits of the property by starting their own business, especially when it is proved that the need of the landlord is bona fide.

16. As far as the judgment of **Madan Lal(supra)** is concerned, this Court is of the opinion that same is not applicable to facts of the case at all. It has been observed by both the courts below that it has come in evidence that respondent no.2, his wife and mother do not occupy any such premises nor they have vacated any such premises without reasonable cause, which in opinion of this Court, is sufficient requirement of law. It has been held in **Vishal Garg Vs. Kamaljit Kaur & Ors. 2011(3) L.A.R. 92 (P&H) = 2011(1) RCR(Rent) 389(P&H)** that non pleading of ingredients of Section 13(3)(i)(a) of East Punjab Urban Rent Restriction Act, 1949 is not fatal, if evidence to that effect has been led. In Madan Lal's case, no evidence was led by the landlord with regard to the fact that son is not in use and occupation of building and rather this fact had come in cross examination for the first time and thus in these circumstances, the court had come to the conclusion that there was non

compliance of ingredients required under law and relied upon Hon'ble Supreme Court's judgment in **Ajit Singh & Anr. Vs. Jit Ram & Anr. 2009(1) L.A.R. 187 (SC) = 2008(2) RCR(Rent) 328**. However, even the said judgment is distinguishable on facts because in the said case, father was owner as well as landlord of a shop which had fallen to the share of his sons on the basis of family partition. Thus, son had become owner/landlord of premises. The ejectment petition was filed by both father and son on the ground of personal necessity in addition to other grounds. It was in these circumstances, that Hon'ble Supreme Court held that it would be mandatory for son to plea and prove that he was not occupying any such building without sufficient cause. In **M/s Jain Type Foundary & Ors. Vs. Raj Pal Kapoor 2009(4) PLR 823**, this Court had again re-iterated the principal that it was not obligatory on the part of the landlord to prove that his son was not in occupation or also not vacated any premises in local urban area without reason.

17. Although, it is not in dispute that there is another property of Pavita Boparai in sector 35, Chandigarh which is also a commercial hub. However, this court or the tenant cannot force a landlord to choose the property in Sector 35, Chandigarh as it is the sweet will of the landlord to choose a property of his/her own choice and establish business.

18. In view of the above, finding no merit in the present petition, the same is hereby dismissed. However, the tenant is given one month's time from receipt of certified copy of this order, to vacate and handover possession of the demised premises.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Rameshwar Singh Malik, J.

CWP No.3715 of 2013

Decided on: 20.02.2013

M/s Hindustan Unilever Limited

Petitioner

Versus

Municipal Council, Rajpura and another

Respondents

Present: Mr. S.N. Chopra, Advocate, for the petitioner.

Punjab Municipal Act, 1911 (3 of 1911), Section 84 – Constitution of India, Article 226, 227 -- House tax – Challenge to – Remedy of Appeal – Writ jurisdiction – Since the petitioner has got equally efficacious alternative remedy of statutory appeal, which has not been availed before filing the present writ petition, no interference is warranted at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

(Para 5-14)

Cases referred:

1. The Executive Engineer and another v. M/s. Sri Seetaram Rice Mill, 2012(3) CCC 68.
2. Municipal Committee, Patiala v. Model Town Residents Association