(2022-4)208 PLR 704
PUNJAB AND HARYANA HIGH COURT
Before: Mrs. Justice Manjari Nehru Kaul.
COL. H.S. DHILLON (RETD.) (DECEASED) TH. LRS. – Petitioner,
Versus
AKHILESH KUMAR SINHA – Respondent.
CR No.4928 of 2015 (O&M)

(i) East Punjab Urban Rent Restriction Act, 1949, (III of 1949) Section 13(f) – Legislature in its wisdom, has used the expression "occupying" which has to be distinguished from the expression "ownership" – In the instant case, the landlord in his petition has categorically mentioned that he is not occupying any other building, rather he has gone even a step ahead and disclosed that none of his family members are occupying any other building in the urban area concerned – Hence, non-disclosure of the ownership of the landlord's son to the extent of 50% share in a residential house would be of no material consequence; more so, when the demised premises has not even been asked for by the landlord for the requirement of his son. [Para 22]

(ii) East Punjab Urban Rent Restriction Act, 1949, (III of 1949) Section 13(a) – Bonafide requirement – Landlord had deposed that the demised premises consists of 2 bedrooms, 1 drawing cum dining room, 1 small Study – RW deposed that the main building consists of 3 bedrooms measuring 15'x12', 15'x13' and 13'x12' – Hence it is clear that the bedroom measuring 13'x12' was being used as a Study by the landlord which leaves the landlord with only 2 bedrooms at his and his family's disposal – Appellate Authority erred in holding that the landlord was guilty of concealment . [Para 24]

(iii) East Punjab Urban Rent Restriction Act, 1949, (III of 1949) Section Section 13 – Appellant Appellate Authority failed to take note of the fact that the subsequent rent petition would have no bearing on the instant case as it was instituted on an independent cause of action owing to the change in circumstances and even otherwise, it is a matter of record that the said rent petition was withdrawn by the landlord on the restoration of the instant rent petition – Rent Controller fell into error by discussing and justifying the requirement stated by the landlord in that ejectment petition. [Para 25]

(iv) East Punjab Urban Rent Restriction Act, 1949, (III of 1949) Section The purpose purpose of proceedings under the Act is to determine as to whether the grounds on which eviction of the tenant is sought, are made out or not – The said proceedings cannot be allowed to go astray by adjudicating upon the genuineness or otherwise of the complaints and certain other litigations which might be pending between the landlord and the tenant – Moreover, the subject matter of the proceedings before the other forum would not necessarily affect

the proceedings under the Act – Appellate Authority not justified in suspecting the bonafide requirement of the landlord merely on the ground that there were other proceedings initiated against the landlord by the tenant. [Para 27]

(v) East Punjab Urban Rent Restriction Act, 1949, (III of 1949) Section 13(a) – Bonafide requirement – Subsequent events – Death of the landlord – What is to be considered is as to whether the need of the landlord existed on that date or not – Death of the landlord would not in any manner adversely affect his case qua the bonafide requirement, more so since the demised premises as pleaded by him in his petition was required for his daughter and her children – Subsequent events in the instant case, i.e. daughter of the landlord getting a house of her husband in Chandigarh and the landlord dying during the pendency of the instant revision petition, would not eclipse the requirement of the landlord (since deceased). [Para 38]

(vi) East Punjab Urban Rent Restriction Act, 1949, (III of 1949) Section 13 – Even in the absence of any specific pleading, if it is proved during the evidence that the landlord fulfils the requirement of the statute, the eviction petition filed by the landlord would not entail dismissal. [Para 39]

Cases referred to:-

1. CA-4688-2006 decided on 07.11.2006, *Vasu Dev v. Union of India.*
2. 2016(1) RCR (Rent) 131*, Brig. Harpal Singh Chahal v. Gopal Gupta.*
3. 2021 SCC Online SC 114, *Balwant Singh v. Sudershan Kumar.*
4. (2019)9 SCC 282, *D.Sasi Kumar v. Soundararajan.*
5. (2017)5 SCC 683, *Mehmooda Gulshan v. Javaid Hussain Mangloo.*
6. (2004)5 SCC 772, *Shakuntala Bai v. Narayan Das.*
7. (2001)8 SCC 561, *Siddalingamma v. Mamtha Shenoy.*
8. Decided on 09.08.2004, *Parbati Poddar v. Brig. Joginder Singh.*
9. 1994 PLRonline 0006 (Del.), *M/s Silvertoe Mfg v. Smt. Usha Soi.*
10. Decided 03.02.2021, *V.K. Kumaresan v. P. Jayaseeian.*
11. 2016 SCC Online P&H 4598, *Sweety v. Rakesh Kumar.*
12. (2003)135 PLR 037, *K.R. Chopra v. Manjit Inder Kaur.*
13. 2016 PLRonline 0102, *Natha @ Jeewan v. Ashok Kumar.*
14. 2019(2) RCR (Rent) 365, *Daya Rani v. Shabbir Ahmed.*
15. 2014(9) SCC 78, *Hindustan Petroleum Corp. Ltd. v. Dilbahar Singh.*
16. 2013(1) RLR 319, *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by its President etc.*
17. 2015(1) RLR 198, *Brij Bhushan v. Sanjay Harjai.*
18. 2018 PLRonline 1300 (SC), *M/s Kaithal Provision Store v. San*jay Ba*nsal.*
19. (1993)2 SCC 68, *Gulraj Singh Grewal v. Harbans Singh.*
20. (2005)13 SCC 99, *C. Karunakaran v. T. Meenakshi.*
21. (1999)6 SCC 222, *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta.*

22. 1987(2) RCR 580, *Prativa Devi v. T.V. Krishnan.*

23. AIR 2001 SC 803, *Gaya Prasad v. Pradeep Srivastava.*

Mr. Ashwani K. Chopra, Senior Advocate with Mr. Gursher Bhandal & Mr. Brahmjot Nahar, for the petitioner.

Ms. Tarun Jain Sinha, and Mr. A.K. Sinha, Respondent – in person.

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Manjari Nehru Kaul, J. – *(22nd September, 2022)* – The petitioner/landlord is impugning the judgment and order dated 06.05.2015 passed by the Appellate Authority, Chandigarh vide which it reversed the findings of the Rent Controller in a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as, 'the Act').

2. Before proceeding further, it would be relevant to point out that the present rent petition was instituted before the Rent Controller on 27.10.1997, however, the same was dismissed as withdrawn on 03.12.2002 in view of the notification dated 07.11.2002 vide which the Act was made inapplicable to UT, Chandigarh. The said notification was later set aside by the Hon'ble Supreme Court vide order dated 07.11.2006 passed in CA-4688-2006 titled as '*Vasu Dev v. Union of India*'[1]. On 11.12.2006 an application for restoration of the present rent petition was moved by the petitioner, however, since the tenant was allegedly evading service in the restoration application, a fresh petition under Section 13 (second petition) of the Act was filed wherein it was specified in para No.5 that if the respondent appears in the restoration application, the second petition would be withdrawn, else the second petition would be pursued. Subsequently on 28.08.2009, the respondent put in an appearance in the restoration application of the first rent petition and accordingly the same was restored to its original number vide order dated 22.10.2009 and the second rent petition was dismissed as withdrawn. Hence, this revision petition emanates from the first rent petition filed by the petitioner/landlord.

3. The parties to the lis hereinafter shall be referred to by their original positions in the suit.

4. The landlord sought eviction of the tenant from the demised premises i.e. annexe portion consisting of 2 rooms, enclosed verandah, kitchen, bathroom and latrine of House No.2157, Sector 15-C, Chandigarh, on the grounds of non-payment of rent and personal necessity.

5. As per the pleaded case of the landlord, he is the owner of House No.2157, Sector 15-C, Chandigarh. The tenant approached the landlord for taking the demised premises on rent for a period of one year on the ground that he was Legal Advisor to some industries in Gurgaon and Faridabad with headquarters at Delhi and he had to travel between Delhi and Chandigarh frequently. Hence, he required the demised premises for his residence. The tenant assured the landlord that he would vacate the demised premises as and when required by the latter. Resultantly, the demised premises was let out to the tenant for a period of one year on a monthly rent of ` 2,500/- exclusive of electricity charges, in the year 1996. The tenant was to vacate the demised premises after the expiry of one year as per

their oral agreement, in July 1997. However, when the tenant was asked by the landlord in April 1997 to vacate the demised premises as he required it for his personal necessity, the tenant instituted a suit for permanent injunction against the landlord on false and frivolous grounds. The landlord pleaded in his petition that his family consisted of his wife and a married son who was also having a child. The married son of the landlord was working for a Management Institute in Gurgaon and on his frequent visits to Chandigarh, he stayed in the separate accommodation which had been kept for him within the main building of the house. Not only this, the son-in-law of the landlord was working in the Merchant Navy and hence, due to the nature of his job, his married daughter too had shifted to the house of the landlord from Delhi. It was further claimed that the daughter of the landlord had two small children aged 1½ years and 3 years respectively. The landlord thus, averred that in view of the necessity of his married daughter and the assurances which had been given to the landlord by the tenant that he would vacate the premises as and when required by him, the tenant be ordered to be ejected from the demised premises.

6. The landlord also pleaded that the demised premises i.e. the annexe was an independent unit and was required by him for his daughter and her children. It was further averred that the personal requirement of the landlord in the above mentioned circumstances was bonafide and neither he nor his family members were either occupying any other residential building in the urban area of Chandigarh nor had they vacated any such building without any sufficient cause after the commencement of the Act.

7. Qua the non-payment of rent, the landlord alleged that the tenant had defaulted in the payment of rent since June 1997.

8. The tenant filed written statement on 01.09.1998, which was subsequently amended in the year 2010. The tenant challenged the claim of the landlord on the grounds of maintainability, for non-joinder of the necessary parties i.e. the landlord's wife as she was the actual landlady since she had issued the rent receipts to him for the period between 01.04.1996 to May 1997. The tenant disputed the claim of the landlord that the demised premises had been let-out to him only for a period of one year, whose expiry was in July 1997. Rather, he claimed that he had been inducted as a tenant by the landlord and his wife on 01.04.1996 pursuant to an advertisement dated 30.03.1996 in The Indian Express for letting out the demised premises. He also claimed that the wife of the landlord had issued receipt qua the rent for the month of April 1996 to the tenant and one month's advance rent too had been given to her. The tenant further claimed that he was always willing to pay the rent to the landlord against rent receipt and had tendered rent from the month of June 1997 to 31.07.1998 before the Rent Controller, on 29.07.1998. Hence, it was urged by the tenant that the petition was not maintainable on grounds of non-payment of rent.

9. Still further, in the written statement the tenant submitted that it was a mere ploy on the part of the landlord to harass him and to exert pressure on him so as to dispossess him from the demised premises on one pretext or the other. The tenant claimed that it was on

account of the harassment meted out to him that he was constrained to institute a suit for permanent injunction along with an application under Order 39 Rules 1 and 2 CPC against the landlord when the landlord and his wife refused to accept rent from him and also forcibly tried to dispossess him. He further submitted that during the pendency of the suit for permanent injunction, interim injunction was granted to him vide order dated 04.07.1997. However, the said order was wilfully disobeyed by the landlord, as a result of which an application under Order 39 Rule 2-A CPC was filed by him against the landlord.

10. It was still further pleaded that the landlord had concealed material facts and given an incorrect description of the demised premises in his petition which was evident from the fact that he had taken two different pleas in two different Courts regarding the same subject matter. He further submitted that in the petition in question, the landlord had sought eviction of the tenant on the ground of personal requirement for the residence of his daughter and her children, however, in the subsequent rent petition qua the same demised premises, eviction had been sought on the ground of occupation for his son’s driver and servants on their visits to Chandigarh from Gurgaon. The tenant also claimed that the daughter of the landlord had taken possession of her husband’s house i.e. House No.1222 in Sector 42, Chandigarh. Not only this, the tenant alleged that the landlord was staying in a huge 2 Kanal house with his wife and hence had no requirement of the demised premises and it was a mere excuse to harass and evict the tenant from the demised premises. On account of the harassment meted out to him, the tenant was not left with any other option but to institute various proceedings before Courts of law as well as the other authorities concerned. He submitted that the 2 Kanal house which comprised of 4 bedrooms with attached bathrooms, 3 stores/servant rooms, drawing-dinning, kitchen and a green-house and was enough to accommodate the landlord and his family and hence, there was no need for him to want the tenant to vacate the demised premises i.e. the annexe.

11. The tenant further alleged that the landlord intentionally concealed that his son had a share to the extent of 50% in House No.1318, Sector 15-D, Chandigarh and that his daughter also had her own house in Chandigarh. Hence, the ground on which the eviction of the tenant had been sought i.e. personal requirement did not exist and accordingly a prayer for dismissal of the rent petition was made.

12. Upon consideration of the material on record and the evidence led by the parties, the Rent Controller ordered eviction of the tenant from the demised premises by holding that the requirement of the landlord came across as being genuine and bonafide. However, the Appellate Authority, while reversing the findings recorded by the Rent Controller, held that the personal requirement of the landlord was neither genuine nor bonafide. Hence, this revision petition.

13. Learned senior counsel appearing for the landlord has vehemently contended that the impugned order is patently erroneous and perverse. He has submitted that while upsetting the findings of the Rent Controller, the Appellate Authority had not only misread the evidence brought on record but also had ignored the well settled principle of law

pertaining to the ejectment of a tenant on ground of personal requirement of the landlord. He vehemently argued that the Appellate Authority proceeded to adjudicate upon the matter with the presumption that the need of the landlord was not genuine and failed to appreciate that the test for determining as to whether the need of the landlord was genuine or not, was to put oneself in the shoes of the landlord and thereafter examine the same from his perspective. Learned senior counsel, while drawing the attention of this Court to the observations made by the Appellate Authority in the impugned judgment, vehemently submitted that the Appellate Authority had made pointed reference to “voluminous evidence”. However, the so called “voluminous evidence” were mere complaints made by the landlord against the tenant to the Bar Council of Punjab & Haryana as well as to the Bar Council of India, and suits and other proceedings instituted by the tenant against the landlord before various Courts and authorities. Learned senior counsel submitted that strangely the findings of the Appellate Authority that the so called “voluminous evidence” had “erroneously been ignored by the Rent Controller” was based on a blatant misreading of the judgment of the Rent Controller. In support, he drew the attention of this Court to the findings recorded by the Rent Controller wherein the Rent Controller while dealing with the complaints and other proceedings etc. between the landlord and the tenant had given categoric findings to the effect that all those proceedings could not in any manner be said to have any bearing on the rent petition instituted on ground of bonafide requirement under Section 13 of the Act by the landlord. Learned senior counsel furthermore submitted that though on the one hand, the Appellate Authority had observed that the Rent Controller had ordered eviction of the tenant on the basis of imaginary grounds and findings, however, a perusal of the findings of the Appellate Authority on the other hand showed that it was his findings which were based on his own assumptions and presumptions as expression used in the length and breadth of the impugned judgment was “hard to believe or highly unbelievable”. While vehemently disputing the pleaded case of the tenant qua there being material concealment on the part of the landlord, the learned senior counsel submitted that the landlord had categorically averred in the petition that neither he nor his family members were in occupation of any other residential building in Chandigarh. He submitted that the subsequent acquisition of the house by the daughter of the landlord would not affect his bonafide requirement in any manner, as his requirement was to be seen as on the date of the institution of the petition under Section 13 of the Act, moreover, the daughter and her children could not be expected to live in either the drawing room or the study until the demised premises was ordered to be vacated. Learned senior counsel also argued that the landlord during his testimony had categorically deposed that since his wife was a patient of migraine, their daughter frequently paid visits to them for nursing her mother and also to look after the house. He still further argued that the landlord who was a senior citizen having retired from the defence services, was being deprived of accommodation for his own daughter and grand-children and had been left at the mercy of the dictates of his tenant. He submitted that it is the landlord who is the master of his

choice and no person much less a tenant, can dictate to him as to how he should be using his accommodation or as to whether the accommodation which was in his occupation was sufficient or not. Learned senior counsel submitted that in the case in hand it was a very strange observation made by the Appellate Authority that since only the landlord and his wife were residing in a huge 2 Kanal house, the accommodation was sufficient for the two of them and also enough to accommodate their guests including their children and hence, the demised premises i.e. the annexe could not have been required by the landlord. He submitted that the Appellate Authority turned a complete blind eye to the testimony of the Draftsman RW-6 Rajinder Arora who deposed that there were only 3 bedrooms on the ground floor and one servant room on the first floor of the house of the landlord which clearly corroborated the pleaded case of the landlord. He also submitted that one of the three bedrooms on the ground floor of the house under occupation of the landlord was being used as a study leaving them with only two other bedrooms, hence in the circumstances, it falsified the case of the tenant that there were four bedrooms available to the landlord to accommodate his daughter and her children. He further argued that while on the one hand, the Rent Controller had, after throwing light on the social values and culture, very aptly observed that it was normal for a daughter to visit her parents and stay with them irrespective of the fact whether or not they were residing in the same city, however on the other hand the Appellate Authority found it highly unbelievable that a married daughter would come to stay with her parents even though she was living in a separate house in the same city. He submitted that the observations and findings recorded by the Appellate Authority on the face of it were irrational and unreasonable being against judicial conscience and deserved to be set aside. He submitted that the Appellate Authority clearly exceeded its jurisdiction while reversing the well reasoned judgment of the Rent Controller on the basis of his own personal beliefs and it did not behove of the Appellate Authority to impose its own wisdom on the daughter of the landlord as to how and when she should or would be expected to visit or stay with her parents after her marriage.

14. Coming to the second rent petition that was instituted in the year 2006 on a subsequent cause of action in view of change in circumstances, i.e. accommodation required by the landlord for the staff of his son while he was visiting Chandigarh, learned senior counsel submitted that it cannot be said that the grounds taken in both the rent petitions were either mutually destructive or were at variance with each other. However, since the second petition was dismissed as withdrawn, it would have no bearing on the instant case.

15. Learned senior counsel lastly urged that the landlord being a senior citizen, who served in the Indian Army throughout his life and also on account of his job exigencies, stayed away from his family, would naturally want to spend quality time with his daughter and grand-children, however instead he had been struggling for the past 25 years just to get back the demised premises which not only belonged to him but had been built by him with his life long earnings. Learned senior counsel submitted that it was never the intent of

the Legislature to put a landlord through such misery and suffering as was blatantly apparent in the case in hand where an unwanted person under the garb of "protection of the Act" had spent more than 25 years depriving the landlord not only of love, affection and presence of his loved ones in a house which had been constructed by him, but also of his mental peace and the time he spent litigating all these previous 25 years. In support, learned counsel has placed reliance upon *'Brig. Harpal Singh Chahal v. Gopal Gupta'* [2] 2016(1) RCR (Rent) 131; *'Balwant Singh v. Sudershan Kumar'* [3] 2021 SCC Online SC 114; *'D.Sasi Kumar v. Soundararajan'* [4] (2019) 9 SCC 282; *'Mehmooda Gulshan v. Javaid Hussain Mangloo'* [5] (2017) 5 SCC 683; *'Shakuntala Bai v. Narayan Das'* [6] (2004)5 SCC 772; *'Siddalingamma v. Mamtha Shenoy'* [7] (2001) 8 SCC 561; *'Parbati Poddar v. Brig. Joginder Singh'* [8] Delhi High Court DOD 09.08.2004; *'M/s Silvertoe Mfg v. Smt. Usha Soi'* [9] 1994 PLRonline 0006 (Del.) ; *'V.K. Kumaresan v. P. Jayaseeian'* [10] Madras High Court DOD 03.02.2021; *'Sweety v. Rakesh Kumar'* [11] 2016 SCC Online P&H 4598; *'K.R. Chopra v. Manjit Inder Kaur'* [12] (2003)135 PLR 37; and *'Natha @ Jeewan v. Ashok Kumar'* [13] 2016 PLRonline 0102.

16. *Per contra,* the respondent appearing in person vehemently opposed and disputed the submissions made by the learned senior counsel appearing for the landlord. He submitted that the impugned order had been passed by the Appellate Authority on a sound appreciation of the evidence on record and the same was in consonance with the settled principles of law. The tenant reiterated his submissions made before the Courts below that the landlord was guilty of material concealment in the petition filed by him as he had intentionally withheld the factum of his daughter being in occupation of her husband's house in Chandigarh and even his son being owner to the extent of 50% in House No.1318, Sector 15-D, Chandigarh. The tenant thus vehemently argued that a litigant who does not approach the Court with clean hands, must be thrown out at the threshold. He further vehemently argued that the requirement of the landlord was not at all bonafide and it was evident that it was just a ploy on his part to get the tenant ejected from the demised premises by hook or by crook. He submitted that the malafides of the landlord was evident from the fact that when he failed to dispossess the tenant forcibly, he started tampering with his water connection, electricity connection and also with the couriers and posts addressed to him in order to force him to vacate the demised premises. The tenant still further argued that the need of the landlord no longer subsisted as his daughter was now residing in her own house. He still further, submitted that it was very strange that as per the landlord the demised premises was required for his daughter and her children, however, strangely she did not even step into the witness box. It was also argued that the Appellate Authority had rightly observed that the house of the daughter of landlord was located in Sector 42, which was not very far-off from Sector 15, i.e. the house of the landlord, hence there was no occasion for the daughter of the landlord to come and stay at her parents' house in Sector 15, Chandigarh. The tenant further argued that even otherwise, since the main house consisted of 4 bedrooms, there was nothing which stopped

the daughter from living in one of those four bedrooms, and further, she could always go back to her house in Sector 42, which was close-by, as and when she wanted. He submitted that in fact it was the Rent Controller who had allowed the petition of the landlord on conjectures and surmises which was rightly set aside by the Appellate Authority. He submitted that the Appellate Authority was perfectly justified and had not committed any error in observing and holding that the Rent Controller had erred in not taking note of all the proceedings initiated by the tenant against the landlord on account of the latter's malicious conduct. While drawing the attention of this Court to the site plan of the house in question, the tenant vehemently urged that the landlord and his wife were living in a huge 2 Kanal house having four bedrooms. He submitted that for two persons, the house was sufficient and even for any guests or visitors including their children they could be easily and freely accommodated therein. He thus submitted that in the aforementioned background, the bonafides of the landlord were highly suspect which had to be appreciated along with the pleaded case of the landlord in the subsequent rent petition wherein he had taken an altogether contradictory plea for the eviction of the tenant. He submitted that the landlord in the subsequent rent petition had sought eviction of the tenant from the demised premises on the ground that it was required for accommodating the driver and servant of his son. He submitted that the contradictory stands taken by the landlord demolished his case of bonafide requirement. He still further, argued that there were no pleadings to the effect that the wife of the landlord was suffering from migraine and his daughter was thus looking after her. He submitted that this yet again showed the desperate efforts on the part of the landlord to get the demised premises vacated on one pretext of the other. It was also vehemently argued by the tenant that in fact it is the landlord who had been creating perpetual nuisance for him and he being a Lawyer was being made to suffer and bear the brunt of the malicious actions/conduct of the landlord. Not only this, during the pendency of the instant revision petition, the landlord had expired and hence his requirement on ground of personal need had ceased to exist.

17. It was lastly argued by the tenant that the scope of revision was limited and this Court could not venture into re-appreciation of evidence and thus, overturn the findings of the Appellate Authority which did not suffer from any illegality or perversity. In support, the tenant has placed reliance upon '*Daya Rani v. Shabbir Ahmed'* [14] 2019(2) RCR (Rent) 365; *'Hindustan Petroleum Corp. Ltd. v. Dilbahar Singh'* [15] 2014 (9) SCC 78, *'A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by its President etc.'*[16] 2013(1) RLR 319; *'Brij Bhushan v. Sanjay Harjai '* [17] 2015(1) RLR 198; and '*M/s Kaithal Provision Store v. Sanjay Bansal '* [18] 2018 PLRonline 1300 (SC) (*Editor: 2018 PLRonline 1209 (P&H) (reversed.)*)

18. I have heard learned counsel for the landlord and the respondent/tenant appearing in person and have perused the relevant material on record.

19. At the outset, it would be most relevant to discuss the scope of revisional jurisdiction of this Court to interfere with the findings of the courts below. Hon'ble the Supreme Court,

in *Hindustan Petroleum Corp. Ltd.'s case* (supra), has held that none of the Rent Control Acts empowers the High Court to interfere with findings of fact, unless such findings are perverse or result in gross miscarriage of justice. It was thus held as under:-

> "43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

20. Guided by the aforesaid principles as laid down by the Hon'ble Apex Court, this Court unhesitatingly holds that in the instant case, findings recorded by the Appellate Authority are grossly erroneous and perverse being based on total misreading of evidence on record and thus, cannot be allowed to stand. The impugned order cannot be said to be in consonance with the settled law and thus, deserves to be set aside for the reasons to follow.

21. The Appellate Authority has held that the landlord was guilty of concealment on two counts. Firstly, he did not disclose about his son being owner to the extent of 50% share in House No.1318, Sector 15-D, Chandigarh and his daughter also having possession of a house in Chandigarh. Secondly, the landlord had intentionally given incorrect description of the bedrooms and other rooms in his house.

It would be apposite to reproduce Section 13(3)(a)(i) of the Act, which reads thus:

> "13. *Eviction of tenants.* –
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> XXXX XXXX XXXX
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> (3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession –

(i) in the case of a residential building if –

(a) he requires it for his own occupation;

(b) he is not occupying another residential building, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord."

22. A minute reading of the aforementioned provisions makes it amply clear that a landlord seeking eviction of a tenant on grounds of personal requirement should not be "occupying" any other similar property/properties within the urban area concerned. Thus, the requirement of law is the disclosure of properties occupied by the landlord. The Legislature, in its wisdom, has used the expression "occupying" which has to be distinguished from the expression "ownership". In the instant case, the landlord in his petition has categorically mentioned that he is not occupying any other building, rather he has gone even a step ahead and disclosed that none of his family members are occupying any other building in the urban area concerned. Hence, non-disclosure of the ownership of the landlord's son to the extent of 50% share in a residential house i.e. House No.1318, Sector 15-D, Chandigarh would be of no material consequence; more so, when the demised premises has not even been asked for by the landlord for the requirement of his son.

23. As far as the possession of another house in Chandigarh with the daughter of the landlord is concerned, no evidence has been brought on record from which it can be inferred that the landlord's daughter was in possession of her husband's house on the date of filing of the petition. A perusal of the evidence led before the Courts below reveals that the tenant has not even put any suggestion qua the above said fact during the cross-examination of the landlord.

24. Coming to the next argument raised by the tenant qua the wrong and incorrect description given by the landlord of his house, a conjoint reading of the testimonies of the landlord as well as of the Draftsman RW-6 Rajinder Arora reveals that the description as given by the landlord is not wrong. The landlord had deposed that the demised premises consists of 2 bedrooms, 1 drawing cum dining room, 1 small Study. RW-6 on the other hand has also deposed that the main building consists of 3 bedrooms measuring 15'x12', 15'x13' and 13'x12' respectively on the ground floor and there is 1 servant's room and a veranda on the first floor. Hence it is clear that the bedroom measuring 13'x12' was being used as a Study by the landlord which leaves the landlord with only 2 bedrooms at his and his

family's disposal. Therefore, in view of the above, the Appellate Authority has definitely erred in holding that the landlord was guilty of concealment on both counts and its observations are clearly based on total misreading of the evidence led before the Rent Controller.

25. The Appellate Authority seemingly was impressed by the submissions made by the tenant that the landlord in his subsequent petition had taken a contradictory ground for ejectment of the tenant which falsified his bonafide requirement as pleaded in his first rent petition. The subsequent rent petition was instituted in the year 2007 wherein the requirement pleaded was for the accommodation of the landlord's son's driver and staff as and when they were in town visiting the landlord. The Appellate Authority failed to take note of the fact that the subsequent rent petition would have no bearing on the instant case as it was instituted on an independent cause of action owing to the change in circumstances and even otherwise, it is a matter of record that the said rent petition was withdrawn by the landlord on the restoration of the instant rent petition. Therefore, the Rent Controller also fell into error by discussing and justifying the requirement stated by the landlord in that ejectment petition.

26. Still further, the Appellate Authority interestingly and strangely observed that the Rent Controller had not discussed the "voluminous evidence" placed on record by the tenant qua the alleged harassment meted out to him by the landlord which smacks of nonapplication of mind. However, on a perusal of the findings recorded by the Rent Controller, it appears that the Rent Controller had appropriately dealt with the so called "voluminous evidence" led by the tenant and rightly held that it would have no bearing on the petition in question, since the Court was to merely examine the bonafide character of personal requirement and necessity of the landlord and nothing more. The Rent Controller also rightly observed that the tenant had separate remedies available to him pertaining to the other issues between him and his landlord and they already stood addressed before the appropriate forums and thus, need not be taken into consideration while adjudicating the instant petition.

27. It would not be out of context to observe here that the purpose of proceedings under the Act is to determine as to whether the grounds on which eviction of the tenant is sought, are made out or not. The said proceedings cannot be allowed to go astray by adjudicating upon the genuineness or otherwise of the complaints and certain other litigations which might be pending between the landlord and the tenant. Moreover, the subject matter of the proceedings before the other forum would not necessarily affect the proceedings under the Act. Hence, the Appellate Authority was not at all justified in suspecting the bonafide requirement of the landlord merely on the ground that there were other proceedings initiated against the landlord by the tenant.

28. The Appellate Authority also erred in drawing a presumption against the landlord that he had withheld the best evidence as his daughter, for whose requirement the demised premises was required, did not step into the witness box in support of the landlord's case.

29. The Hon'ble Apex Court in *'Gulraj Singh Grewal v. Harbans Singh'* [19] (1993) 2 SCC 68, while examining the question as to whether a landlord can be non-suited on the ground of non-examination of the son for whose benefit the premises were sought to be vacated, held that in case the need has otherwise been established in evidence, such non-examination would be immaterial.

30. Further, the Hon'ble Supreme Court while reiterating the above view in '*C. Karunakaran v. T. Meenakshi'* [20] (2005) 13 SCC 99, held as under:-

> "5. … … … Mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady. In a number of decisions, [this fact is acknowledged by the first appellate court also], it has been held that it is not necessary to examine the person for whose need the premises are required. It depends on the facts and circumstances of each case."

31. Furthermore, as recently as in the case of '*Mehmooda Gulshan'* (supra) the Hon'ble Supreme Court re-affirmed the said view by holding that merely because the landlord had not examined a member of his family, who intended to do business on the premises, he could not be non-suited on that ground if otherwise he had been able to successfully establish his genuine need. Therefore, it is amply clear that the Appellate Authority had acted in contravention to the aforesaid settled principle of law.

32. Now coming to the submissions of the tenant that the landlord along with his wife was living in a huge house measuring 2 Kanals having 4 bedrooms and a green-house and hence, the daughter of the landlord along with her children could be easily accommodated in the main-house. The Appellate Authority made a categoric observation in the said regard by observing that "by seeing the accommodation in this two kanals corner house where landlord and his wife are residing. There is no other family member residing permanently with them. So, by seeing such huge accommodation in possession of landlord, it cannot be believed that he has more need for the guests and for the family of his daughter to live in the annexe portion at the time of visit with them."

33. The aforesaid submissions of the tenant as well as the observations made by the Appellate Authority to say the least are preposterous. It needs to be observed here that it is not for the tenant or for that matter even a Court to dictate to a landlord qua the adequacy or otherwise of the accommodation available with him.

34. Hon'ble the Apex Court in *Balwant Singh's case* (supra), has held that it is not for the tenant to dictate how much space would be adequate for the purpose of business or venture or even to suggest that the available space with the landlord would be adequate. Hon'ble the Supreme Court further held that the adequacy or otherwise of the space available with the landlord for the business in his mind is not for the tenant to dictate.

35. Reference needs to be made to the observations made by the Hon'ble Apex Court in '*Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta'* [21] (1999) 6 SCC 222, wherein it was held that if the landlord wishes to live in comfort in his own house, the law does not command or compel the landlord to squeeze himself and live in lesser space so as to protect the

tenant’s continued occupation of the tenanted premises. Further the Hon’ble Supreme Court in *‘Prativa Devi v. T.V. Krishnan’* [22] 1987 (2) RCR 580, had held that “the landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

36. In the present case, there is nothing which would stop the landlord from asking for more accommodation in his own house, more so when he has a family which includes his daughter, grandchildren and even his son who as per his pleaded case, visit him frequently. There can be no two opinions that once the landlord has successfully established his personal necessity and requirement of the demised premises, the tenant in the circumstances would have to vacate and exit from the demised premises. Further, the house of the landlord has 3 bedrooms on the ground floor and 1 servant’s room on the first floor. As already discussed earlier, the landlord has been using one of the bedrooms as his Study, therefore, looking at the size of his family which has naturally grown in the past so many years, bonafide necessity of the landlord with respect to the demised premises comes across to be a reasonable one keeping in view the comfort and convenience of the family members. It is but natural for the landlord to want his family and other guests visiting him to be comfortable during their visits to his place. The landlord can certainly not be asked to adjust his family in green-house or even the Study merely because the tenant unabashedly does not wish to vacate the demised premises. At the expense of repetition, it needs to be reiterated that the tenant cannot question the extent of accommodation required by his landlord.

37. The submissions made by the tenant that since the landlord had expired and even his daughter had got her husband’s house in Chandigarh, his requirement for getting the demised premises vacated no longer subsisted, is devoid of any merit and deserves to be rejected. It is no longer res-integra that the requirement of the landlord has to be adjudged as per the circumstances in existence on the date of filing of the petition. It would be sufficient for the landlord to prove that the requirement as pleaded by him existed at the time of the institution of the ejectment petition. It is based on the well known maxim “Actus Curiae Neminem Gravabit” which implies that an act of the Court shall prejudice no man. The Hon’ble Supreme Court in *D. Sasi Kumar’s case* (ibid), has held that if on the date of filing of the petition under Section 13 of the Act, the requirement subsisted and was duly proved, it would be a sufficient ground to order the ejectment of the tenant irrespective of the delay in the judicial process coming to fruition. It was still further observed that the bonafide requirement of a landlord may in some cases cease to subsist on the date of final adjudication but at the same time, one could not loose sight of the fact that the judicial process does consume a long time, and merely because of some delay in the culmination of judicial proceedings, if the benefit was declined, it would only encourage the tenants to protract the litigation in order to defeat the rights of the landlord. In *‘Gaya Prasad v. Pradeep Srivastava’* [23] AIR 2001 SC 803, also the Hon’ble Supreme Court categorically held

as under:

"10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

XXXX XXXX XXXX

13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.

XXXX XXXX XXXX

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

XXXX XXXX XXXX

17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact finding courts."

38. In the instant case also, the petition was filed on 27.10.1997, therefore, what is to be considered is as to whether the need of the landlord existed on that date or not. Death of

the landlord would not in any manner adversely affect his case qua the bonafide requirement, more so since the demised premises as pleaded by him in his petition was required for his daughter and her children.

39. The landlord had filed the petition in the year 1997 which was decided by the Rent Controller in the year 2012. Thereafter, the appeal was decided by the Appellate Authority in the year 2015 and ever since then, this revision petition has been pending before this Court. Therefore, in the light of the principles of law enunciated by the Hon'ble Supreme Court in *Gaya Prasad's case* (supra), which stand reproduced hereinabove, this Court has no hesitation in holding that the subsequent events in the instant case, i.e. daughter of the landlord getting a house of her husband in Chandigarh and the landlord dying during the pendency of the instant revision petition, would not eclipse the requirement of the landlord (since deceased). The reason being that the daughter of the landlord was admittedly not in possession of the house of her husband on the date of institution of the petition in question, as already discussed earlier. Still further, in his crossexamination the landlord categorically deposed that his daughter alongwith her children was a frequent visitor to his house. Not only this, it was also categorically stated by the landlord that since his wife was a patient of migraine, his daughter along with her family comes not only to look after her mother but also to take care of the house. This deposition of the landlord comes across as being very genuine and forthright. There can be no fixed rules as to when, why and how the children of a person including his or her daughters should be visiting their parental home. The bonafide requirement, in the circumstances, never ceased to subsist. No doubt, the tenant has taken an objection before this Court that there had been no pleadings to the above said effect in the petition and hence, the landlord could not take it as one of the grounds during his evidence. However, in the opinion of this Court, this objection is unsustainable as in a plethora of cases, it has been time and again held that even in the absence of any specific pleading, if it is proved during the evidence that the landlord fulfils the requirement of the statute, the eviction petition filed by the landlord would not entail dismissal. The tenant has also not been able to controvert the settled position of law that strict rules of pleadings would not apply to the proceedings before the Rent Controller which are in the nature of an enquiry.

40. Strangely and interestingly, the Appellate Authority observed that the Rent Controller had returned imaginary findings which could not be believed and were unsustainable and thus, were against the existing facts. However, ironically in the same breath, the Appellate Authority went ahead to base its own findings on assumptions and presumptions. It would not be out of context and rather pertinent to reproduce the relevant excerpts:

> "... ... ... It is admitted fact that her husband is working in Merchant Navy and used to remain away for 8 months in a year, so one can imagine that his daughter and her children are how independent from the husband of her daughter and residing at their own for 8 months in India. So, it is not believed that such a family has to come by leaving their house in Sector 42-C and reside with petitioner. It is a different matter if daughter

and her children do visit to the petitioner but it is also not believable that they have to come here and spent long holidays when her house is in Sector 42-C, Chandigarh which is not far away from Sector 15-C the house of the landlord… … …”

41. The Appellate Authority, in its wisdom, further went on to observe as under:

“… … … Once it is established that daughter has her own house then it is believable that she do come to see and look after her parents but where the necessity of such daughter reside for a long time with the parents arise. Had there been such visits and residing even at night time and also during the festivals but it is not believable that by leaving her own house, daughter and family member reside with landlord for long time. So, it is only imaginary findings having no base nor based on any pleadings and evidence… … …”

42. Still further, the Appellate Authority also raised a very absurd suspicion qua the requirement of the landlord on the ground that it could not be believed that after one year of having rented out the demised premises, the necessity of the landlord qua the demised premises had arisen.

43. The aforementioned findings and the observations of the Appellate Authority to say the least are most absurd and certainly not in consonance with the practical reality of life. The Hon’ble Supreme Court though its various pronouncements, has time and again held that the concept of bonafide need or genuine requirement needs a practical approach guided by the realities of life, and an approach either too liberal or too conservative or pedantic must be guarded against. It has also been time and again held that in order to ascertain as to whether the requirement is sincere and honest and not just an excuse for evicting the tenant, the question to be considered by a Judge of facts by placing himself in the shoes of the landlord is whether or not in the given facts proved by the material on record, the need to occupy the premises can be said to be natural, real, sincere and honest.

44. Eviction of a tenant can certainly not be allowed or declined on the beliefs of a Court, rather the requirement has to be seen through the perspective of the landlord in order to conclude whether the projected requirement is bonafide or not. In the instant case, it seems that the Appellate Authority, instead of judging the need from the point of view of the landlord, was thrusting and imposing its own wisdom upon not only the landlord but also his married daughter, which deserves to be frowned upon by this Court. This Court has no hesitation in observing that the approach of the Rent Controller was perfectly just and in consonance with the settled law, wherein he took note of the practical realities of life and thereafter arrived at a reasonable conclusion. The Rent Controller was conscious of the fact that the landlord and his wife being senior citizens, would naturally look forward to the company of their children, especially the daughter and grandchildren. However, the Appellate Authority chose to brush aside the observations of the Rent Controller in a single stroke and instead made it onerous upon the landlord to prove his requirement to be bonafide beyond reasonable doubt as if it was a criminal trial.

45. This Court has no hesitation in concurring with the findings recorded by the Rent

Controller that the need of the landlord came across as being most genuine, natural and bonafide instead of it being a mere pretext or ruse to evict the tenant.

46. The case law relied upon by the respondent/tenant would not come to his rescue as the impugned order, suffers from patent illegality and is grossly erroneous. The impugned order being perverse, cannot be sustained. The findings of the Appellate Authority being based on a total misreading of the evidence has caused grave miscarriage of justice and hence, cannot be treated as findings in consonance with the law.

47. Consequently, the impugned order passed by the Appellate Authority is set aside and the order dated 27.05.2012 passed by the Rent Controller is restored. The respondent/tenant is granted time till 31.01.2023 to hand over vacant possession of the demised premises to the landlord.

48. The revision petition stands allowed in the above terms.

49. Before parting with this order, this Court would like to observe that the tenant dragged a retired defence personnel into protracted litigation for 25 years, who had constructed the house out of his life savings but could not live in peace ever since the tenant refused to vacate the demised premises. It will not be remiss to mention that the Appellate Authority while reversing the well reasoned judgment of the learned Rent Controller, had in its over enthusiasm chosen to render advice to the landlord as to how to use his own property. A Court cannot and should not try to assume the role of an advisor to the landlord, as to how the property should be put to use, regardless of the size of the premises.

R.M.S. – Petition allowed.