

Balkar Singh v. Sucha Singh

PUNJAB AND HARYANA HIGH COURT

Before : Justice Amarjot Bhatti, J.

BALKAR SINGH – PETITIONER

versus

SUCHA SINGH — Respondent

CR No. 4412 of 2023(O&M)

East Punjab Urban Rent Restriction Act, 1949 – Section 13 – By no means it can be said that the requirement of Sucha Singh is unreasonable or not genuine. The landlord/respondent (petitioner in the main case) has every right to start his own business in his own premises as per his desire. It is his moral duty to settle down his grown up sons during his lifetime. Therefore, the requirement of landlord/respondent (petitioner in the main case) for the tenanted shop is bona fide.

Mr. R.K. Arya, for the Petitioner. Mr. Naresh Jain, for the Respondent-Caveator.

Amarjot Bhatti, J. – (20.12.2023) – The petitioner – Balkar Singh has filed the present civil revision under Article 227 of the Constitution of India for setting aside the judgment dated 01.07.2023 passed by learned Appellate Authority, Gurdaspur and ejectment order dated 08.02.2023 passed by learned Rent Controller, Gurdaspur alleging that the impugned orders are based on conjectures and surmises and non appreciation of material evidence available on the record.

2. The facts of the case are that Sucha Singh – respondent (petitioner in the main case) filed petition under Section 13 of the East Punjab Urban Rent Restriction Act for ejectment of respondent from the shop marked as IJKL shown in red dotted lines in the site plan with the boundaries as detailed in the petition, situated at Dadwan Road Dhariwal, Tehsil and District Gurdaspur. The petitioner/landlord submitted that the shop in question was owned by him which was in occupation of the respondent/tenant for the last about 20 years on a monthly rent of Rs.1,000/-. There existed relationship of landlord and tenant between the parties. The respondent/tenant is liable to be ejected from the shop in dispute on the ground of non payment of rent since January, 2000 and secondly, he required the demised shop for his own use and occupation as well as for use and occupation of his sons namely Ajay Paul Singh and Montek Singh who were dependent on him. He wanted to engage himself as well as his sons in the business. The said shop is part and parcel of the building owned by him. It is old double storey building over a plot measuring 23 marlas situated at Dadwan Road, Dhariwal, Tehsil and District Gurdaspur. The site plan of the entire building was placed on record. It consisted of 5 shops and a motor room in the front portion. There were residential rooms on the first floor of these shops. The shops are integrated part of the remaining building. His son Ajay Pal Singh was Law Graduate but he was not settled in his

legal profession, therefore, he wanted to settle down his son Ajay Paul Singh and other son Montek Singh who was about to complete his studies in business. They wanted to open a departmental store-cum-mall by raising new construction as shown in the site plan. He had also filed ejectment petitions against the other tenants who were in possession of four shops as shown in the site plan. The entire old structure would be demolished to construct a commercial building i.e. departmental store/mall. He was not occupying any other building or vacated any such building in the urban area of Dhariwal. He requested the respondent to pay the arrears of rent but he put off the matter on one excuse or the other. He also asked the respondent several times to vacate the demised shop and to hand over the vacant possession but he refused to do so and ultimately, the present ejectment petition was filed by the petitioner/landlord- Sucha Singh.

3. The petition was contested by the respondent by filing written reply taking preliminary objection that the ejectment application was not maintainable. The petitioner did not come to the Court with clean hands. He had no locus standi or cause of action to file this case. The respondent was dragged in unnecessary litigation. On merits, it was denied that the shop in question marked as IJKL shown in red colour was owned by the petitioner. In fact he was neither owner of the shop nor has got any right, title or interest therein. The respondent was in occupation of demised shop for the last about 35 years. It was denied that monthly rent of the shop was Rs.1,000/-. The relationship of landlord and tenant was also denied. In fact, he was inducted as tenant by Smt. Raj Rani on a monthly rent of Rs.200/-. He is running business in the shop for earning his livelihood. It was further denied that he was in arrears of rent since January, 2000. It was further denied that the petitioner was having bona fide requirement for the said shop for his own use and occupation or the same was required for his sons. It was further denied that the shops are part and parcel of the remaining building. It was denied that in the front portion, there exist 5 shops and a motor room owned by the petitioner. The shops are not part and parcel of the said building. The petitioner had no right to demolish the shop in possession of the answering respondent. The site plan was incorrect. The petitioner never made any request to the respondent. It was prayed that the petition filed by the petitioner deserved dismissal with cost. 4. In replication, the averments in the written statement were denied and those of petition were reiterated. From the pleadings of the parties, following issues were framed on 02.02.2019 and further one additional issue was also framed on 08.02.2023:-

1. Whether there exists the relationship of landlord and tenant between the parties? OPP
2. Whether the petition is not maintainable? OPR
3. Whether the petitioner has not come to the Court with clean hands? OPR
4. Whether the petitioner has no locus standi to file the present petition OPR
5. Whether the petitioner has no cause of action to file the present petition? OPR
6. Relief.

1-A Whether the applicant/petitioner is entitled to eject the respondent from the demised

shop in question on the ground of personal necessity for himself as well as for his sons?
OPP

5. In order to prove the petition, the petitioner examined Ashwani Kumar Tuli, Draftsman as PW-1, Surinder Pal, Junior Assistant office of Municipal Council, Dhariwal as PW-3, he himself stepped into the witness box as PW-3, Rajan Kumar, Registry Clerk as PW-4, Ajay Paul Singh as PW-5. Thereafter, learned counsel for the petitioner tendered in evidence documents Ex.P10 to Ex.P13 and closed the evidence.

6. To rebut the evidence of the petitioner/respondent-Balkar Singh himself stepped into the witness box as RW-1 and tendered documents Exhibit R-2 to R-5 and closed the evidence.

7. After hearing the arguments advanced by learned counsel for the parties, the petition filed by Sucha Singh-petitioner was allowed vide ejectment order dated 08.02.2023 passed by the then Rent Controller, Gurdaspur. Feeling aggrieved of the aforesaid order, Rent Appeal was filed against respondent/petitioner. Regarding non-payment of rent another additional issue No. 1-B was framed. Ultimately, appeal was also dismissed vide judgment dated 01.07.2023. Feeling aggrieved of this judgment, the petitioner/tenant has filed present civil revision.

8. The learned counsel for the petitioner/tenant argued that the impugned judgment dated 01.07.2023 passed by the Appellate Authority, Gurdaspur and the ejectment order dated 08.02.2023 passed by the learned Rent Controller, Gurdaspur are liable to be set aside. The evidence available on record was not considered by the Courts below. In fact there is no relationship of landlord and tenant between the parties. The petitioner/tenant claimed that he took the shop in dispute on rent from Smt. Raj Rani wife of Dharminder Nath and he is in possession of the shop for the last about 36 years. He was inducted as tenant on rent at the rate of Rs.200/- per month which he paid to Smt. Raj Rani, the landlady. The respondent (petitioner in the main case) had based his entire claim on the basis of one sale deed dated 23.01.1998 Exhibit P-9 regarding purchase of 1 kanal 3 marlas of land from Smt. Raj Rani. The perusal of said sale deed clearly indicated that it was sale of old building and there was no reference of 5 shops or tenants in the said building. Therefore, the shop in the possession of present petitioner is not part and parcel of the building purchased by the respondent vide sale deed dated 23.01.1998 Exhibit P-9. Therefore, the findings given by the Courts below that the respondent (petitioner in the main case) had purchased the said building including the shop in question is without merits. There is no evidence to establish that the present petitioner/tenant had ever acknowledged the respondent as his landlord or paid any rent to him. The Courts below wrongly concluded that there existed relationship of landlord and tenant between the parties. In fact, the respondent (petitioner in the main case) had no locus standi to file this case against the present petitioner/tenant. The findings given by the Courts below that the respondent (petitioner in the main case) required the shop in question for his personal use and occupation is also without justification. In order to seek ejectment on the ground of non payment of rent and for personal use and necessity, the respondent (petitioner in the main case) firstly required to establish that he was owner of the premises in dispute. From the evidence led by the respondent (petitioner in the main case), it is not established that he had purchased the shop in question from his landlady

namely Raj Rani. The findings given by the Courts below pertaining to issue No.1, 1A and 1B and issue No. 2 to 5 are liable to be set aside. It was prayed that the ejectment order passed by the learned Rent Controller dated 08.02.2023 and the impugned judgment dated 01.07.2023 passed by the learned Appellate Authority dismissing the appeal is without justification. It is submitted that the present civil revision may be accepted and the aforesaid judgments passed by the Courts below may kindly be set aside by dismissing the ejectment petition filed by respondent-Sucha Singh.

9. On the other hand, the learned counsel for the respondent pointed out that the facts of the case and the evidence on record are rightly appreciated by the Courts below. There is documentary evidence on record to establish that Sucha Singh is the landlord/owner of the shop in dispute along with the remaining building by virtue of registered sale deed dated 23.01.1998 Exhibit P-9. The property was rightly described in the sale deed as well as in the site plan proved on record. There are residential rooms on the first floor over the shops including the shop in dispute. The shops are integrated part of the remaining building and it cannot be separated. The recital in the sale deed as well as the record of assessment register proved on file was rightly considered by the Courts below and it was rightly concluded that Sucha Singh-respondent (petitioner in the main case) had purchased the entire building including the shop regarding which ejectment petition was filed. Regarding the other tenants separate ejectment petitions were filed. The possession of one of the shop was taken from the tenant Dharampal whereas Balwinder Singh surrendered the possession of the shop and regarding third tenant Bua Singh the execution proceedings are going on. The respondent (petitioner in the main case) required the shop in question along with other shops for his personal use and occupation. He along with his sons Ajay Paul Singh and Montek Singh wanted to start their own business by constructing a new building i.e. a departmental store-cum-mall. The need of the landlord is bona fide and genuine. The Courts below rightly concluded that Sucha Singh required the shop in question for his own personal use and occupation as well as to settle down his sons. It is pointed out that the present petitioner is occupying the shop in question without payment of any rent since the year 2000. Even after the decision of learned Appellate Authority vide impugned judgment dated 01.07.2023, the present petitioner did not make any effort to pay the arrears of rent. Therefore, the present petitioner was rightly evicted from the shop in question on the ground of non-payment of rent as well as on the ground that the landlord required the premises for his own use and occupation. The civil revision preferred by the present petitioner/tenant is without merits and the same may kindly be dismissed.

10. I have considered the arguments advanced before me and I have also gone through the learned trial Court record carefully. Sucha Singh the respondent (petitioner in the main case) filed ejectment petition against Balkar Singh tenant regarding shop marked as IJKL shown in red colour situated at Dadwan Road Dhariwal, Tehsil and District Gurdaspur. The respondent (petitioner in the main case) claimed that he had purchased the shop including the entire building from Smt. Raj Rani vide registered sale deed dated 23.01.1998 which is proved on record as Exhibit P-9. On the basis of this sale deed, Sucha Singh claimed that there existed relationship of landlord and tenant between the parties. On the other hand the present petitioner/tenant Balkar Singh denied the relationship of landlord and tenant and he asserted that he was inducted as tenant by Smt. Raj Rani. As per his version, the

shop in question is not part of the building which was purchased by Sucha Singh from Raj Rani vide sale deed dated 23.01.1998 Exhibit P-9. The perusal of ejectment order dated 08.02.2023 as well as the judgment of the learned Appellate Authority dated 01.07.2023 reveals that before the Courts below the main argument advanced by learned counsel for the petitioner/tenant Balkar Singh was that he denied the relationship of landlord and tenant between them. The present Civil Revision has been argued on the same line. The respondent/landlord has proved on record copy of sale deed dated 23.01.1998 Exhibit P-9 vide which he purchased old building in dilapidated condition situated in Khasra No.289/2/2(1.3) consisting of 5 rooms in poor condition along with gate and boundary wall for a sum of Rs.4,50,000/-. The execution and registration of sale deed is proved on record by examining Rajan Kumar, Registry Clerk as PW-4 as well as by Sucha Singh as PW-3. The copy of jamabandi for the year 2017-18 is Exhibit P-10 and on the basis of aforesaid sale deed mutation No.7421 was sanctioned and copy of mutation is Exhibit P-11. The learned Appellate Authority in the impugned judgment dated 01.07.2023 categorically dealt with the point raised by learned counsel for the petitioner/tenant that in this sale deed there was reference of 5 rooms in dilapidated condition instead of five shops, otherwise there is no dispute regarding the identity of property. The said sale deed is not disputed by the vendor Raj Rani who has admittedly shifted to Delhi after the demise of her husband. The present petitioner/tenant admitted that he had taken the shop in question on rent from Smt. Raj Rani. Apart from the title deed duly reflected in the revenue record there is testimony of Surinder Pal, Junior Assistant, Municipal Council Dhariwal examined as PW-2 who has proved on record the assessment register for the year 2004-05 Exhibit P-2 where Sucha Singh has been shown in the column of ownership and the present petitioner along with other tenants is shown in column No.5. These entries are further confirmed in the assessment register for year 2010-11 which is Exhibit P-3. There are receipts of payment of property tax by Sucha Singh-respondent (petitioner in the main case) which are Exhibit P-4 to P-8. The respondent/landlord further examined Ashwani Kumar Tuli, Draftsman as PW-1 who has proved the site plan of the entire property Exhibit P-1 in which the shop in question is marked as IJKL as detailed in the ejectment petition. In order to rebut the aforesaid evidence, there is sole testimony of Balkar Singh, the tenant as RW-1. I have also gone through the cross-examination of this witness which confirmed that the entire building is situated on Dadwan Road, Dhariwal, Tehsil and District, Gurdaspur. The shop in question as well as the shop in possession of his brother are within the Municipal limits of Dhariwal. He claimed that there was rent note executed with Raj Rani but it was lost. The location of all the shops as shown in the site plan Exhibit P-1 is confirmed by this witness during his cross-examination. Therefore, there is nothing on record to show that the shop in possession of present petitioner/tenant is not part and parcel of the property purchased by Sucha Singh - respondent (petitioner in the main case) by virtue of sale deed dated 23.01.1998 Exhibit P-9. The self serving statement of Balkar Singh RW-1 is not sufficient to ignore the oral as well as documentary evidence produced on the file by Sucha Singh - respondent (petitioner in the main case). Once Sucha Singh purchased the property from Smt. Raj Rani, the previous owner, he stepped into the shoes of previous vendor. Therefore, the findings given by the Courts below regarding the relationship of landlord and tenant between the parties is duly established.

11. Sucha Singh - respondent (petitioner in the main case) filed this ejectment petition on

two grounds and one of the ground was that the tenant was in arrears of rent since January, 2000. It is matter of record that no rent has been paid by the present petitioner since January, 2000. He claimed to be in possession of shop in question for the last about 36/37 years. Sucha Singh respondent (petitioner in the main case) filed the ejectment petition against the present petitioner that he is in arrears of rent since January 2000. The perusal of impugned judgment dated 01.07.2023 passed by the learned Appellate Authority indicates that during the pendency of the appeal additional issue 1-B was framed as to whether the tenant is in arrears of rent. Before the learned Rent Controller, the relationship of landlord and tenant was disputed, as a result neither any issue was framed nor any finding came on record. Regarding this issue the findings are returned by the learned Appellate Authority, Gurdaspur in the impugned judgment. It is rightly pointed out that the rent receipts Exhibit R2 and R-3 relied upon by the petitioner/tenant cannot be safely relied upon as these rent receipts are pertaining to two shops. Therefore, it cannot be co-related with the shop in question. The learned Rent Controller returned the finding in the ejectment order dated 08.02.2023 that there existed relationship of landlord and tenant between the parties and despite this there was no effort on the part of present petitioner/tenant to pay the arrears of rent. The learned Appellate Authority concluded that the rate of rent of the shop in question was Rs.200/- per month and he is in arrears of rent w.e.f. January, 2000 which he failed to pay. The learned counsel for the landlord/respondent (petitioner in the main case) pointed out that the petitioner/tenant is in possession of the shop since then without payment of any rent. Therefore it was rightly concluded by the learned Appellate Authority that Balkar Singh petitioner/tenant is liable to be evicted from the shop in question on account of non payment of arrears of rent and the findings given by the learned Appellate Authority pertaining to issue No.1-B does not require any interference.

12. The landlord/respondent (petitioner in the main case) also filed this ejectment petition on the ground that he requires the shop for his personal use and necessity as well as to settle down his sons namely Ajay Paul Singh and Montek Singh. The landlord wanted to construct a departmental store/mall by eviction of all the tenants to start his business along with his sons. The version put forward by Sucha Singh PW-3 is also confirmed by one of his son Ajay Paul Singh as PW-5. He also explained that they had already received possession of two shops from the tenants and regarding one shop execution proceedings were going on. By no means it can be said that the requirement of Sucha Singh is unreasonable or not genuine. The landlord/respondent (petitioner in the main case) has every right to start his own business in his own premises as per his desire. It is his moral duty to settle down his grown up sons during his lifetime. Therefore, the requirement of landlord/respondent (petitioner in the main case) for the tenanted shop is bona fide. Thus, the findings given by the learned Rent Controller as well as by the learned Appellate Authority on issue No.1-A does not require any interference.

13. Considering the facts of the case and the evidence on record, the findings arrived at by the learned Rent Controller while passing ejectment order dated 08.02.2023 and the findings given by the learned Appellate Authority vide judgment dated 01.07.2023, do not suffer from any illegality or irregularity. Therefore, the findings given by the Courts below are accordingly upheld and the civil revision preferred by the present petitioner is accordingly declined.

The records received from the two Courts below be sent back to the concerned quarter.

Pending application(s), if any, shall also stands disposed of.