

Before S. S. Sodhi, J.

MOHAR SINGH AND ANOTHER,—*Petitioners.*

*versus*

HARINDER SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 2940 of 1988.

10th September, 1990.

*East Punjab Urban Rent Restriction Act, 1949 (III of 1949)—S. 13—Eviction—Personal necessity—Landlord living elsewhere seeking ejection of tenant from ground floor for personal necessity on account of old age and mental disorder of his unmarried daughter—First floor falling vacant during pendency of ejection application and the same let out to another tenant—Failure to occupy first floor does not dis-entitle landlord from seeking ejection from ground floor—Conduct of tenant—Mala fides—Punitive damages—Tenant shifting to his own house during pendency of litigation keeping demised premises locked and vacant—Tenant directed to hand over possession and pay Rs. 5,000 as punitive damages besides costs of litigation throughout.*

*Held*, that when the entire house is in the possession of more than one tenant, with each tenant occupying a separate and different portion, the choice rests with the landlord of selecting the portion or portions he needs for his personal use and occupation. Where the landlord specifically seeks possession of the ground floor and that too for sound and plausible reasons on account of old age and mental disorder of the unmarried daughter, the fact that when the first floor fell vacant, he did not occupy it but let it out again, cannot be taken to detract from his *bona fides*. (Para 6)

*Held*, that the fact that the tenant built his own house and kept the demised premises vacant and unoccupied for nearly a year, it clearly denotes malicious intent on his part to harm and harass the landlord. Hence, keeping in view the wholly unwarranted conduct of the tenant, he is directed to pay to the landlord a sum of Rs. 5,000 as punitive damages besides paying all costs of the proceedings before the rent controller and the appellate authority including costs of the Local Commissioners appointed in this case. (Para 13)

*Petition under section 115 C.P.C. for revision of the order of the Court of Shri T. S. Cheema, Appellate Authority, Chandigarh dated 25th August, 1988 affirming that of the Court of Shri R. C. Gupta, HCS, Rent Controller, Chandigarh dated 9th November, 1987 dismissing the application with costs.*

**Mohar Singh and another v. Harinder Singh and another**  
(S. S. Sodhi, J.)

---

*Claim : Petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for the ejectment of the respondents from ground floor of house No. 3186, Sector 27-D, Chandigarh.*

*Claim in Revision : For reversal of the order of both the courts below.*

M. L. Sarin, Sr. Advocate with Jaishee Thakur and Hemant Sarin, Advocate, for the Petitioners.

Ashwani Kumar Chopra, Advocate, for the Respondent.

**JUDGMENT**

S. S. Sodhi, J.

(1) Blatant *Mala fides* of the tenant is the striking feature of this petition by the landlord seeking possession of the demised premises on the ground of personal necessity.

(2) The premises lie unoccupied and locked sans electric connection for about a year now, it appears, since the tenant built his own house in Chandigarh and shifted there. Counsel for the tenant had no explanation to offer why the tenant persists in withholding the possession of these premises from the landlord.

(3) The landlord here is the 85 years' old Ram Singh, whose family consists of his 60 years' old son Mohar Singh, his daughter-in-law Sushil Kaur, who has been suffering from mental disorder for over 18 years now and their grown-up but unmarried daughter. The demised premises being the ground floor of House 3186, Sector 27, Chandigarh. This house has a first floor and a *barsati* too. Two rooms on the *barsati* are with the landlord while the rest of the accommodation is with tenants.

(4) In their petition for ejectment, the landlords Ram Singh had his son Mohar Singh sought possession of the ground floor on account of their old age and the mental ailment of Sushil Kaur. Admittedly, neither Ram Singh nor Mohar Singh own or possess any other residential accommodation in Chandigarh. While he was in service Mohar Singh had, no doubt, been allotted government residential accommodation, but he is no longer in possession thereof since his retirement on October 31, 1987.

---

The main factor which appears to have weighed with the appellate authority in denying relief to the landlords was the fact that during the pendency of the proceedings, the first floor of the building fell vacant and it was again let out to another tenant. This, it was observed, rendered their *bona fides* open to question.

(5) In dealing with this aspect of the matter, it must be appreciated that it was specifically the possession of the ground floor of the building that was sought for personal occupation, on the grounds, as mentioned earlier, namely; the old age of the landlords and the mental ailment of Sushil Kaur. What had fallen vacant during the pendency of the proceedings was the first floor and this was then let out to another tenant. The evidence on record shows that it was let out at the same rent as was being paid by the previous tenant.

(6) The law is well-settled that when the entire house is in the possession of more than one tenant, with each tenant occupying a separate and different portion thereof, the choice rests with the landlord of selecting the portion or portions he needs for his personal use and occupation. In a case like the present where the landlord specifically seeks possession of the ground floor and that too for sound and plausible reasons as set-forth in the petition. The fact that when the first floor fell vacant, he did not occupy it but let it out again, cannot be taken to detract from his *bona fides*.

(7) According to the counsel for the tenant, however, the landlord would disentitle himself to an order for ejection on the ground of personal necessity where during the pendency of the proceedings, a part of the house is vacated by another tenant and it is again let out on rent. Cited in support being *Krishan Dev and ors. vs. Dhian Singh* (1); *Gurbachan Singh vs. Shri Chaman Lal Kapur* (2) and, *Shri Makhan Singh vs. Shri Shadav Raj Soni* (3); All these cases are, however, distinguishable on facts from the present case, inasmuch as, here the specific prayer of the landlord was for the ground floor and for the special reasons mentioned in the petition.

(8) The appellate authority had also held against the landlords with regard to the reasons for which possession of the ground floor

---

(1) 1980(2) R.C.R. 141.

(2) 1981(2) R.C.R. 667.

(3) 1985(2) R.C.R. 435.

Mohar Singh and another v. Harinder Singh and another  
(S. S. Sodhi, J.)

---

was sought by them. It being observed in this behalf that the evidence led did not show that either on account of old age of the landlords or the mental ailment of Sushil Kaur, it was imperative for them to live on the ground floor. A reference to the evidence on record would show that in order to establish the mental state of Sushil Kaur, the landlord examined A.W. 1, Dr. Krishan Chandiramani from the Department of Psychiatry at the Post-Graduate Medical Institute, Chandigarh, who deposed that Sushil Kaur has been suffering from Schizo-effective disease since 1972 and she was still under treatment. He could not say whether or not this disease was curable. As regards the age of the two landlords, no doubt has been expressed with regard thereto, namely; that Ram Singh is now 85 years of age while Mohar Singh is 60 years old. The appellate authority had, in this behalf, adverted to *Ram Lal Sunda and Ors. vs. Santosh Kumari Sood* (4), which was a case for landlady living on the first floor seeking ejection of a tenant on the ground-floor on account of her ailment and doctor's advice. It was held that normal disease and decay of human body cannot and should not be a ground *per se* for providing a pretence of the landlord living on the first floor for eviction of the tenant on the ground floor unless medical advice to this effect was compulsive. The argument here being that as no medical evidence had been led, to the effect, that it was imperative for the landlord and Sushil Kaur to live on the ground floor, they could very well occupy the first floor, and having failed to do when it fell vacant they thereby disentitled themselves to the relief claimed. This contention, though attractive, on the face of it, cannot however, stand scrutiny when regard is had to the fact that the case here is not of landlord's living in the premises seeking possession of the ground floor but of landlords living elsewhere seeking possession of a specific portion of their house and for good reasons. This judicial precedent is not, therefore, applicable in the present case.

(9) In these circumstances therefore there can be no escape from the conclusion that both the rent controller and the appellate authority clearly fell in error in declining to order the ejection of the tenant on the ground that the landlords' *bona fide* required the demised premises for their own use and occupation.

(10) The glaring feature of this case is, however, provided by the subsequent events that have occurred. In pursuance of an

application filed in this Court on November 12, 1989, Mr. A. L. Behl, Advocate was appointed Local Commissioner to inspect the demised premises with a view to report whether or not they were lying locked. According to the report of this Local Commissioner of November 24, 1989, the main door was found locked. After obtaining the key from the landlord when he went inside the demised premises, he found that the entire premises gave a deserted look. All the rooms were lying vacant. There was a lot of dust on all the doors of the rooms and the electricity meter was also not working. There was a lot of dust on the meter too.

(11) When the matter came up for arguments today for the respondent-tenant, when pointedly asked, could neither confirm nor deny whether or not the demised premises were still lying vacant and unoccupied. Mr. J.P.S. Sandhu, Advocate, who happened to be present in Court at that time was consequently deputed to visit the demised premises and to report whether they were lying vacant or were occupied and if so by whom. According to the statement of Mr. J.P.S. Sandhu, which was recorded on his return, all the rooms on the ground floor were lying vacant and no one was living there. There was in fact no sign of any one having lived there. He looked through the window-panes and saw that there was no furniture lying in any of the rooms. They were all vacant and there was a lot of dust in the rooms as also in the verandah and courtyard outside. Further, that there was no electricity meter for the ground floor.

(12) It will be seen, therefore that the demised premises were found to be vacant and unoccupied in November 1989 and also now in September 1990. It would be reasonable therefore to assume that they have been lying vacant during all this period. According to the petitioner this has been so since the respondent-tenant built their house at 317, Sector 46-A, Chandigarh and shifted there. This circumstance must indeed reflect most adversely against the respondent-tenant. It clearly denotes malicious intent on his part to harm and harass the petitioners.

(13) Such thus being the situation and the circumstances of the case, the impugned order of the appellate authority cannot be sustained and is accordingly hereby set aside and an order of ejectment is passed against the respondent-tenant with the direction that he shall hand over vacant possession of the demised premises to the landlord on or before September 14, 1990. Further, keeping in

K. L. Sharma and others v. The State of Haryana and another  
(Amarjeet Chaudhary, J.)

---

view the wholly unwarranted conduct of the tenant, he is also hereby directed to pay to the petitioner-landlord a sum of Rs. 5,000 as punitive damages, besides paying all their costs of the proceedings before the rent controller and the appellate authority including costs of the Local Commissioners appointed in this case.

(14) This revision petition is, in these terms hereby accepted.

---

R.N.R.

*Before Amarjeet Chaudhary, J.*

K. L. SHARMA AND OTHERS.—Petitioners.

*versus*

THE STATE OF HARYANA AND ANOTHER.—Respondents.

*Civil Writ Petition No. 6531 of 1989.*

19th September, 1990.

*Constitution of India, 1950—Arts. 14, 16, 226—All India Services (Leave) Rules, 1955—Rl. 20-B—Government of Haryana raising maximum limit of leave encashment from 180 days to 240 days—Benefit not extended to employees retired prior to 1st July, 1986—Such action—Whether discriminatory.*

*Held*, that all the petitioners irrespective of their dates of retirement are entitled to the benefit of cash equivalent of leave salary including dearness allowance in respect of the period of earned leave at their credit on the date of retirement subject to a maximum of 240 days and the decisions saying that the benefit of leave encashment will be applicable to the employees retiring on or after 30th September, 1977 and 1st August, 1986, respectively are quashed being unconstitutional. The respondents are directed to pay the petitioners cash equivalent to the leave salary (including dearness allowance admissible to them on the leave salary) at the rates in force on the date of their retirement in respect of the period of earned leave at their credit subject to a maximum of **240 days** with 12 per cent p.a. from the date of filing of the writ petition till realisation.  
(Paras 9 & 10)

*Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to :—*

- (i) *Issue a writ in the nature of writ of certiorari calling for the records of the respondents relating to the decisions,*