Atma S. Berar vs Mukhtiar Singh on 12 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 624, 2003 (2) SCC 3, 2002 AIR SCW 5282, 2003 HRR 101, 2003 SCFBRC 174, 2002 (9) SCALE 257, 2002 (7) SLT 306, 2003 (1) UJ (SC) 122, 2003 (2) SRJ 128, 2003 (2) ALL CJ 962, (2003) 1 CIVILCOURTC 400, (2003) 1 LANDLR 462, (2003) 1 PUN LR 371, (2003) 1 RENCJ 23, (2003) 1 RENCR 42, (2003) 1 RENTLR 186, (2002) 8 SUPREME 691, (2002) 9 SCALE 257, (2003) 1 WLC(SC)CVL 519, (2003) 1 INDLD 34, (2003) 1 CURCC 43

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Bench: R.C. Lahoti, Brijesh Kumar

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           CASE NO.:
Appeal (civil)  2898 of 2000

PETITIONER:
Atma S. Berar

RESPONDENT:
Mukhtiar Singh

DATE OF JUDGMENT: 12/12/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR.

JUDGMENT:
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J U D G M E N T R.C. Lahoti, J.

An order for eviction from residential building on the ground of requirement of the landlord for his own occupation passed by the Controller and upheld in appeal by the Appellate Authority has been upset and reversed by the High Court in exercise of revisional jurisdiction. The aggrieved landlord is in appeal by special leave. Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter the Act, for short) contemplates a landlord making an application to the Controller for an order directing the tenant to put the landlord in possession of residential building if he requires it for his own occupation. The order of the Controller is subject to appeal before Appellate Authority. Under sub-Section (5) of Section 15 of the Act, the High Court is conferred with jurisdiction of calling for and examining the records for the purpose of satisfying itself as to the legality or propriety of any order passed or proceedings taken under the Act. The High Court may pass such order in relation thereto as it may deem fit.

The suit premises are a residential building constructed by the landlord-respondent in the year 1961 in the city of Moga. He was a member of Indian Revenue Service. He retired and lived in the suit premises with his wife upto 30.4.1982. On 1.5.1982 he let out a part of the suit premises to the tenant-respondent. The appellant, with all his experience acquired in the services, thought of trying his luck as a consultant/advisor in customs and central excise matters and hence shifted to the industrial township of Ludhiana. On 14.6.1991 the landlord initiated proceedings for the eviction of the tenant-respondent alleging that he had grown old and was not in a position to continue the profession of consultant/advisor. At one time he had a mind of purchasing or renting in suitable accommodation but at the end he had given up the idea and decided finally to settle in Moga and live peacefully in the suit premises of his own. His wife too was in a fragile state of health and Moga provided adequate medical facilities to take care of the wife's health apart from the warmth of affection and nearness of friends and relations and old acquaintances. The suit premises are the only premises owned by the appellant. Admittedly, he has no other premises of his own available for his residence anywhere else.

The requirement of the landlord, as pleaded and proved, was found worth entitling the landlord to an order for recovery of possession over the tenanted premises, in the opinion of the two courts below the High Court. By the time the litigation travelled up to the High Court and came to be decided by the impugned order dated 6.7.1999 about 8 years had elapsed in-between. The life of the old retired revenue service personnel had not remained static and underwent several events in pursuit of peace and comfort so imminently needed in the evening of life to a person who had the fortune of having good education and also enjoying status and position in life being a member of All India Services. We would concentrate on dealing with the events which occurred pendente lite and predominantly prevailed with the High Court for reversing the finding of facts as to requirement which, but for those events, probably the High Court would not have been inclined to do. It appears that most of the relations of the appellant-landlord are settled in Canada. The appellant spends time with them and stays quite often at Canada. On 1.11.1986, he acquired status as a permanent resident in Canada. In the year 1995 he has also got Canadian citizenship. In November 1989, he let out an additional portion of the building to the same tenant, i.e. the respondent. On 16.1.1990 and 21.2.1990, the appellant wrote two letters to the tenant respondent which letters spell out the parties negotiating for sale and willingness of the appellant to sell the house to the tenant. Admittedly, the negotiations failed. On 14.6.1991, proceedings for eviction were initiated. On 27.7.1996, the Rent Controller passed an order for eviction of the respondent. On 29.9.1997, the appellate authority dismissed the tenant's appeal. On 5.3.1998, the High Court made a remand to the appellate authority for recording further evidence in the light of the two letters dated 16.1.1990 and 21.2.1990 affording the landlord an opportunity of explaining his conduct as disclosed by the two letters and if these letters had the effect of causing a dent in the case of requirement as pleaded by the landlord. The appellant's statement was recorded by the appellate authority. The appellate authority once again, by order dated 19.1.1999, dismissed the tenant's appeal. On 6.7.1999, the tenant's revision was allowed by the impugned order. The High Court has, in its impugned order, held that the appellant-landlord was at an advanced age of life and as all his relations were settled in Canada where the appellant too seems to have settled, it was difficult to accept the story that the appellant would come back to India and live in the suit premises. This finding finds additional strength, in the opinion of High Court, from the factum of the appellant having negotiated the sale of the house with

the tenant early in the year 1990 as revealed by his two letters.

At this stage, we would like to refer to the statement of the appellant recorded by way of additional evidence by the appellate authority on 28.4.1998. The appellant was 80 years of age on that day. He states that he belongs to Moga Tehsil where he had built his house and was living happily with his family. He wants to reside in his own house. His wife hails from village Lopo in Tehsil Moga. His eyesight has been reduced almost to nil and he has to be supported by someone in his movements. His hearing power was also rendered very weak. His wife was almost of his age and though the old age had set in for her too yet she was enjoying reasonably good faculties functioning well by God's grace. He candidly admitted having written the letters dated 16.1.1990 and 21.2.1990. He explained, "When I wrote these letters I thought that it would be difficult for me to get the building vacated and as such I should sell the same. As such, the correspondence in this respect continued for about three months in the beginning of 1990. The negotiations did not mature. The respondents refused to purchase the property. Thereafter I changed my mind and I made up my mind to live at Moga since I could not live at Ludhiana. . I made up my mind that I was not to sell the house at any cost to anyone. None of my daughters is now living at Ludhiana." He further stated that he had three sons. Two of them were well settled with their families and living away from him. The third son had died in an air crash. He had two brothers. Both have died. He again said, "When I had written the letters I had a mind to shift to Canada." He went on to say that his first cousin Jagat Singh Brar was living just behind the suit house at Moga and he too had retired from Indian Revenue Services about 10-12 years before. He has other landed property in village Gulab Singh Wala, Tehsil Moga. He left his practice in 1985 on account of the death of his third son.

In the light of the statement of the landlord, as originally recorded and as additionally recorded under the orders of the High Court, indeed a pathetic story of landlord-tenant litigation and law's delays is revealed. A retired government servant, accompanied by his old aged life companion, is shuttling between India and Canada in search of a shelter and settlement in the evening of life so as to peacefully pass the balance of his life and to breathe his last in his own house which is the only property which he had built on his own by investing his earnings and his toil. It is true that the appellant has good number of kith & kin settled in Canada and the thickness of relationship with them tempted him to try a settlement in Canada but his links and moorings in his motherland were not all lost. It is very natural for an ageing Indian to witness his sentiments for the motherland and the birth place gaining more strength and bondage becoming thicker with the advancement in age. His desire to convert the house, which he has built himself, into a home so as to live peacefully therein with his wife cannot be said to be unnatural and certainly not wishful merely or whimsical.

One of the grounds for eviction contemplated by all the rent control legislations, which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have his own premises, residential or non-residential, for his own use or his own occupation. The expressions employed by different legislations may vary such as 'bona fide requirement', 'genuine need', 'requires reasonably and in good faith', and so on. Whatever be the expression employed, the underlying legislative intent is one and that has been demonstrated in several judicial pronouncements of which we would like to refer to only three.

In Ram Dass Vs. Ishwar Chander & Ors., (1988) 3 SCC 131, M.N. Venkatachaliah, J. (as His Lordship then was) speaking for the three-Judges Bench, said "Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as "bona fide requirement", "reasonable requirement", "bona fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

In Gulabbai Vs. Nalin Narsi Vohra & Ors., (1991) 3 SCC 483, reiterating the view taken in Bega Begum Vs. Abdul Ahad Khan, (1979) 1 SCC 273, it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

Recently, in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222, this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself ___ Whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest? If the answer be in positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self occupation than what has been already stated in the three precedents. Let us revert back to the facts of the case. Can it be said that the desire of the landlord to be in his own house and live comfortably in his own castle ___ every home is a castle to the inmate ___ restricting his movements so as to adjust with ailing physique and weakening faculties is unnatural, illusory, a pretext or mere pretence for getting rid of the tenant? What is there to demonstrate that the need is divorced of reality, sincerity and honesty? Fed up by the litigation and alarmed by the delays which eviction matters unfortunately take in law courts, having acquired a proverbial notoriety, brought down the landlord on his knees and he offered the tenant to sell his house so that he could settle himself by utilizing the sale proceeds in some other house but in the heart of Moga Tehsil which he loves, for, he was born there and remained attached to it in spite of moving at places. There is no evidence adduced nor any material brought on record to hold that the landlord had ever tried to sell the house to anyone other than the tenant himself or at any time before and after the month of January and February 1990. We must give weight to the factor that the landlord

has not felt shy of admitting having written the two letters __ rather having negotiated the sale with the tenant __ but then he assigns reason which sounds reasonable and probable and explains his conduct. His determination to live in his own house is emboldened by the attitude of the tenant. We find nothing unnatural about it. The learned appellate authority took into consideration the entries contained in the passport showing the landlord's frequent movements between India and Canada wherefrom the appellate authority inferred that the appellant's links with Moga were still alive. The learned senior counsel for the respondent criticized this finding submitting that the passport entries show the landlord's entry into India but not necessarily his stay at Moga. Suffice it to observe, where else and for what the landlord, having reached India, would have gone excepting visiting his own place which is the natural urge of any son of the soil to do while visiting the country or returning to the motherland.

Simply because a different Judge of Court of facts could have been persuaded to change opinion and draw a different inference from the same set of facts is not the jurisdiction of a revisional authority to upset pure finding of fact. Precedents galore were cited by the learned senior counsel for the parties dealing with jurisdiction of revisional court to interfere with findings of fact. In all fairness to the learned counsel, we may refer to a few of them.

The object of conferring revisional jurisdiction on the High Court, by sub-Section (5) of Section 15 of the Act, is to enable it satisfying itself as to the legality or propriety of an order made by the Controller or the proceedings before him. In Ram Das Vs. Ishwar Chander and Ors. (1988) 3 SCC 131 it was held that the nature and scope of revisional jurisdiction conferred on the High Court shall have to be determined on the language of the Statute investing the jurisdiction. In Prativa Devi Vs. T.V. Krishnan (1996) 5 SCC 353 a three-Judge Bench held that the revisional power referable to Section 25-B(8) of Delhi Rent Control Act, 1958 is not as narrow as the revisional power under Section 115 of the CPC and it is also not so wide as an appellate power. Having kept the legal principles in view and on an objective determination and on a proper appreciation of the evidence in the light of the surrounding circumstances a conclusion as to the need of the demised premises for user by the landlord and his bona fides shall not be liable to be interfered with in exercise of revisional power. In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 this Court made a comparative study of the provisions contained in section 115 CPC in juxtaposition with Section 25-B(8) of Delhi Act and held that the High Court cannot appreciate or reappreciate evidence dictated by its mere inclination to take a different view of the facts as if it were a court of facts. A conclusion arrived at which is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available, ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusions from the established facts as betray a lack of reason and/or objectivity would render the finding 'not according to law' calling for an interference under Section 25-B(8) proviso by the High Court. Mudigonda Chandra Mouli Sastry Vs. Bhimanepalli Bikshalu and Ors.- (1999) 7 SCC 66 and Lekh Raj Vs. Muni Lal and Ors. (2001) 2 SCC 762 take the same view. The scope of revisional jurisdiction under Section 15(5) of the Act is similar, that is, confined to testing the legality or propriety of order or proceedings of Controller.

The learned counsel for the tenant-respondent submitted that the findings arrived at by the Rent Controller and the Appellate Authority were vitiated and the High Court was justified in interfering

therewith especially in the light of the events which had taken place during the pendency of the proceedings. The power of the Court to take note of subsequent events is well-settled and undoubted. However, it is accompanied by three riders : firstly, the subsequent event should be brought promptly to the notice of the Court; secondly, it should be brought to the notice of the Court consistently with rules of procedure enabling Court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events; and thirdly, the subsequent event must have a material bearing on right to relief of any party. We have dealt with each one of the so- called subsequent events brought to the notice of the High Court as also of this Court by the learned counsel for the tenant-respondent. None of them causes a dent in the case of bona fides and need as were found proved by the authorities below the High Court. Seen in the light of normal human nature and behaviour, the events pendente lite rather reinforce the direness of the need. We need only remind ourselves of the observations made by three-Judges Bench of this Court in Prativa Devi's case (supra) "the landlord is the best judge of his residential requirements. 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". The High Court need not be solicitous and venture in suggesting what would be more appropriate for the landlord to do. "That was the look out of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled forThere is no law which deprives the landlord of the beneficial enjoyment of his property". The present one, in our opinion, is an appropriate case where the High Court ought not to have interfered with the findings of fact arrived at by the two authorities below and that too concurrently, in exercise of its revisional jurisdiction simply because it was inclined to have a different opinion.

The appeal is allowed with costs throughout. The judgment of the High Court is set aside and that of the Rent Controller and the Appellate Authority restored. An order for recovery of possession over the suit premises, in favour of the landlord and against the tenant, shall follow. The tenant-respondent is allowed four months' time for vacating the suit premises and delivering vacant and peaceful possession to the appellant-landlord and in-between clearing and continuing to clear all the arrears of rent subject to his filing usual undertaking within a period of three weeks from today.