

Kanwaljit Vs. Harbans Kaur

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Court : Punjab and Haryana

Decided On : Jan-22-1992

Reported in : (1992)101PLR480

Judge : V.K. Jhanji, J.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 13, 15 and 15(6)

Appeal No. : Civil Revision No. 2134 of 1987

Appellant : Kanwaljit

Respondent : Harbans Kaur

Advocate for Def. : H.L. Sibal, Sr. Adv. and; Suvir Sehgal, Adv.

Advocate for Pet/Ap. : H.L. Sarin, Sr. Adv. and; Ashish Handa, Adv.

Disposition : Petition dismissed

Judgement :

V.K. Jhanji, J.

1. This is tenant's revision petition against whom an eviction order has been passed by both the Authorities below. Respondent-landlady who is the owner of the premises in dispute, filed an ejectment petition under the Haryana Urban

(Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act'), against the tenant (petitioner herein) on the ground that the tenant has not paid the arrears of rent at the rate of Rs. 275/- per month w.e.f. 1.6.1979 to 31.7.1979 and Rs. 68.75 p. as house tax. The ejectment was also sought on the ground that the tenant has changed the purpose of tenancy. The premises were given to the petitioner for running small lathe machine for the purpose of repair works, whereas, the petitioner has installed a furnace therefor melting and moulding the metal without the written consent of the respondent ; that the tenant-petitioner has also impaired the value and utility of the building in dispute by making material alterations in the premises by converting the shed into rooms and further construction without the consent of respondent-landlady. It was also alleged that the tenant has made unauthorised construction in the premises, and used the same recklessly which impaired the value and utility of the premises.

2. The petition was contested by the tenant who, on the first date of hearing, tendered the arrears of rent. Rest of the allegations were controverted.

3. On the basis of evidence produced by the parties to the ejectment petition, the Rent Controller passed an order of ejectment against the tenant on the ground that he has impaired the value and utility of the premises by making material alterations without the written consent of the landlady as well as on the ground that the tenant has changed the user of the premises from repair works to that of manufacturing. This order was challenged by the tenant in an appeal before the appellate Authority, who though affirmed the finding of the Rent Controller in respect of change of user, but set aside the finding of the Rent Controller on the ground of tenant having impaired the value and utility of the premises. The tenant has impugned the orders of both the authorities below by way of this revision petition.

4. Shri H. L. Sarin, Senior Advocate, learned counsel for the petitioner-tenant contended that once the appellate authority has returned a finding in favour of the tenant that he has not impaired the value and utility of the premises, then it ought to have returned the finding on other issue i. e. the tenant has changed the user, in favour of the tenant, because merely, setting up a furnace of using the premises

from one purpose to another, will not amount to change of user. In support of his arguments, he relied upon judgment of Supreme Court in Mohan Lal v. Jai Bhagwan (1988-1) 93 P. L. R. 670 (S. C.) , judgment of Supreme Court in Rattan Lal v. Asha Rani, 1988 H. R. R. 625, a Full Bench judgment of this Court in Sikander Lal v. Amrit Lal, (1984) 86 P. L. R. 1 (F. B), and a judgment of this Court in Rameshwar Dass v. Hakim Ram Sarup Garg, (1989-1) 95 P. L. R. 132.

5. On the other hand, Shri H. L. Sibal, Senior Advocate, learned counsel for the respondent-landlady contended that finding of the appellate Authority that the tenant has not impaired the value and utility of the premises by making material alterations is not correct and the same is liable to be reversed. He further contended that the appellate Authority while deciding the said issue, has not taken into consideration the material evidence, nor has adverted to the reasoning which was arrived at by the Rent Controller after appreciating the evidence on record. On the second issue, he contended that the tenant was running an auto repair business, but thereafter he has installed a furnace by getting an electric connection of 3 B.H.P. He further contended that earlier, the tenant was running the business under the name and style of 'Khullar Auto Repair Workshop', and now, he is running the business under the name and style of 'Khullaf Auto Industries', and this by itself shows that from repair; business; he has started up an industry Which cannot be said to be user, adjunct or ancillary to the original purpose.

6. After hearing learned counsel for the parties at length and on perusal of the record, I am of the view that the finding of the appellate Authority on the issue that the tenant has not: impaired the value and utility of the premises by making material alterations, is liable to be reversed. Admittedly, the premises in dispute were let out to the tenant in the year 1976. The appellate Authority while reversing the finding of the Rent Controller on this issue took into consideration that Exhibits A-2 and A-3 do not show that the premises in dispute are the same and moreover, unauthorised construction shown in, Exhibit A-3 does not, tally with the unauthorised construction, mentioned in the petition. No Building Inspector has been produced who might have visited the, spot and seen the construction going on there. This finding of the appellate Authority cannot be sustained because the

Municipal Committee vide notice dated 12.1.1975;(Exhibit A-1) called upon, the respondent-landlady to demolish the unauthorised construction within a week. The unauthorised, construction was shown in the plan (Exhibit A-2). This plan is of the year 1975 and was sent along with the notice, Exhibit A-1. The unauthorised construction was not demolished by the respond landlady and the premises in dispute Were let out to the petitioner in the year 1976. Again in the year 1979, when the premises were on rent with the petitioner-tenant, another notice dated 26.6.1979 (Exhibit A-3) was served upon the landlady showing therein more construction to have been raised apart from the one shown in plan A-2, and the landlady was asked as to why the construction was being made without the consent of the Municipal Committee. The landlady vide notice, Exhibit A-4, was-also asked to demolish the construction.

7. During the course of pendency of proceedings before the Rent Controller, a Local Commissioner was appointed to go to the spot and determine the existing position and nature of the site. Shri Pushpinder Singh, Advocate, who was appointed as Local Commissioner, submitted his' report (Exh. A.5)'and also a plan (Exhibit A-6) which show that a huge construction existed on the site apart from what was shown in plan; Exhibit A-2. In order to 'show that these constructions were made by the tenant, AW-4. Building Inspector, Subhash Chander, deposed that these' constructions were made in the year 1979 and, at the time of issuance of notice regarding unauthorised construction he had visited the spot. The statement of this very witness examined in subsequent petition was also placed on record as R-3. This subsequent statement of building Inspector also shows that he had gone to the site at the time when the construction was being carried out. He also stated that at that time, the plan was prepared in order to show unauthorised construction. This plan has been produced on the record' as Exhibit A-3'. Perusal of the plan coupled with the Statement of Building Inspector leads to only one conclusion that the tenant without he written consent of the landlady made material alterations in the premises in dispute. Admittedly no written consent was taken by the tenant from the landlady and therefore, this act of tenant clearly amounts to impairing the value and utility of the premises in dispute without the, written consent of the landlady. The finding of the appellate Authority that no building Inspector was produced, is therefore, not based upon, the record because

AW-4 Subash Chander was examined and his statement in subsequent proceedings was also placed on record as, R-3, There is no dispute about the plans because the plans pertain to the premises in dispute and a bare perusal of the said ,plans shows that plan, Exhibit A-2 which is of the year 1975 tallies with the plan, Exhibit A-3, which is of the year 1979, as well as plan, .Exhibit A-6, which was prepared by. the Local Commissioner at the time when he visited the spot. Therefore, the finding of the appellate Authority on this issue is hereby reversed.

8. Faced with this situation, Mr. Sarin contended that the respondent-landlady cannot be allowed to impugn this part of the order as she has not filed any revision petition challenging this order. This contention of learned counsel for the petitioner-tenant cannot be accepted because the respondent not only can support the order, but can also impugn the finding given against her in the Court below in respect of any issue. Mr. Sibal, learned counsel for the respondent landlady has placed on record a copy of cross-objections which were filed in. the Registry on 21st of September, 1987, impugning the issue on which, finding was given against the respondent by the appellate Authority, but these cross-objections were returned by the Registry by raising an objection that the same are not maintainable. I need not go into the question as to whether the cross-objections are maintainable or not. This Court while exercising its powers under sub-section (6) of Section 15, of the Act, can go into the legality and propriety of the order. Now coming to the second ground of ejectment, i. e. change of user, I find that the Rent, Controller as well as the appellate Authority; on the appreciation of evidence, have come to a concurrent finding of fact that the premises in dispute were let out for the purpose of repair works, but the said purpose has now been changed to that of manufacturing. In order to arrive at this finding, the Authorities below took into consideration that 3 BHP electric connection was taken by the tenant in the year 1980 and thereafter, a furnace was installed for the purpose of melting and moulding the metals. This purpose in any way cannot be said to be connected with the repair works, but is altogether a different purpose, and this activity can safely be said to be an industrial activity.

9. The judgments relied upon by Mr. Sarin, have no application to the facts of the present case and are clearly distinguishable. In Mohan Lal's case (supra), where a

shop was let out for the purpose of running an English liquor vend, but the tenant changed over to general merchandise business, the Supreme Court held that change of user would not cause any mischief or detriment or impairment to the shop and the said business can be conveniently carried on in the said premises.

10. In Rattan Lal's case (supra), where the shop was taken for running a grocery shop, and thereafter, the tenant started running a book-shop, the Supreme Court held that this will not amount to change of user.

11. In Sikander Lal's case (supra), where the premises were leased out for setting up handlooms, but the tenant added a carding machine thereto, the Full Bench of this Court held that added user is adjunct or ancillary to original purpose and therefore, it is not a change of user. In this case, the order of ejectment was, accordingly, set aside.

12. In Rameshwar Dass's case (supra), where the shop in dispute was let out for 'hikmat', but the tenant used the said shop for storing and selling acid, this Court in the facts and circumstances of the case found that by storing and selling acid, no mischief or detriment or impairment of the premises is going to be caused, and thus, this will not amount to change of user.

13. In the present case, the tenant in order to set up a furnace for the purpose of melting and moulding the metals, not only took an electric connection of 3 BHP but also made material alterations in the premises because the premises which were let out for the purpose of auto repair works, could not be used without structural alteration for the setting up of a furnace for the purpose of melting and moulding the metals. This change cannot be said to be a small change, or ancillary or adjunct to the original purpose, rather the work of melting and moulding the metals now being carried out by the tenant is an industrial activity. Therefore, I am of the view that the authorities below rightly concluded that the tenant has changed the user of the premises without the written consent of the landlord.

14. Resultantly, the revision petition is dismissed but with no order as to costs. However, the petitioner is allowed three month's time to vacate the premises provided he pays the arrears of rent within one month from today and also filed an

undertaking before the Rent Controller to the effect that he shall hand over the vacant possession of the premises in dispute on the expiry of aforesaid period.

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