

Teja Singh Vs. Arjan Dev

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Court : Punjab and Haryana

Decided On : Oct-07-1999

Reported in : (2000)124PLR27

Judge : R.L. Anand, J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 13(2) and 13(3)

Appeal No. : Civil Revision No. 3395 of 1991 (O and M)

Appellant : Teja Singh

Respondent : Arjan Dev

Advocate for Def. : H.S. Gill, Sr. Adv. and; N.S. Gill, Adv.

Advocate for Pet/Ap. : V.G. Dogra, Adv.

Disposition : Petition dismissed

Judgement :

R.L. Anand, J.

1. This is a tenant's revision and has been directed against the judgment dated 16.8.1991, passed by the Appellate Authority, Ropar and along with this revision the tenant has also given challenge to the order of the same date passed by the appellate authority which dismissed the appeal of the appellant under Section 15

of the East Punjab Urban Rent Restriction Act (hereinafter called 'the Act') and application under Order 41 Rule 27 C.P.C. for leading the additional evidence.

2. The facts of the case can be noticed in the following manner. Shri Arjan Dev son of Shri Babu Ram Sharma, filed the ejectment petition under Section 13 of the Act against Shri Teja Singh, the predecessor-in-interest of the present petitioners, seeking ejectment of the tenant from one house fully described in the head note of the petition situated at Mohalla Phool Chakkar, Ropar and case set up by the landlord was that Shri Teja Singh, original tenant, was let out the premises in dispute on monthly rent of Rs. 80/- vide rent note dated 13.9.1984 for residential purposes. The tenancy was for a period of 11 months. However, after the expiry of the fixed period, respondent-tenancy continued to remain in its possession. His ejectment was sought on the ground of nonpayment of rent from 1.7.1988 till the date of the filing of the petition; that the demised premises had become unsafe and unfit for human habitation; that respondent had materially impaired the value and utility of the property by making alteration etc. and that tenants has changed the user of the premises from residential to commercial. While elaboration as to how the premises have become unsafe and unfit for human habitation, it was averred by the landlord that the house was quite old one and was in dilapidated condition. The walls had left the points and it developed serious cracks. The roof of the portion CDEF as shown in the red colour in the site plan attached with the petition, had fallen in the last week of June, 1988 and the remaining portion shown in blue colour was likely to fall at any time. A civil suit for permanent injunction was filed by the landlord against the tenant from making any construction or alterations as he may not take undue advantage. A Local Commissioner was also got appointed. Anyhow, the tenant came to know about the injunction and he made some alterations without the consent of the landlord but inspite of the alterations, demised premises remained unsafe and unfit for human habitation.

3. Notice of the petition was given to the respondent. He admitted the tenancy and also the execution of the rent note. However, he added that he had been running a commercial business of cutting grass on charges and sale of green fodder for the last 20/25 years, denying if the premises was given for residential purposes and also if it was ever used for that purpose. According to the tenant the premises

consisted of one room and Chhan and he had been doing this business from the date of taking the premises. So much so he got an electric meter installed about 9 years back and the Chhan was laid 15 years back. For few months, the respondent started a tea-stall but again he resorted to his earlier profession of cutting grass. Respondent denied if the premises had become unsafe and unfit for human habitation. According to him, there was some vacant portion towards the southern side of the rented property and the landlord constructed a shop there forcibly in the absence of the respondent about 5/6 months back for which he showed his intention to take separate civil and criminal action. The tenant stated that the rented premises do not suffer from any defect. There is no danger or risk to his life and property. On the request of the landlord he replaced some rotten balas of the hind portion of the roof of the room and also over-turned the Sarkandas of the roof without changing the structure of the roof. It was also stated by the tenant that Chhan was old one. Respondent also denied the allegations of the landlord that he made any material alteration etc. in the demised premises. According to him, the premises in question were never meant for residential purposes. It was for commercial purposes and the same purpose is being carried out by him.

4. The landlord filed a rejoinder to the written statement of the tenant in which he reiterated the allegations made in the petition and denied those of the written statement and from the pleadings of the parties the learned Rent Controller, framed the following issue:-

1. Whether the tender made on 20.9.1988 is valid? OPR
2. Whether the demised premises have become unfit and unsafe for human habitation as alleged? OPA
3. Whether the respondent has made material alteration in the demised premises? If so, to what effect? OPA
4. Whether the respondent has changed the user of the demised premises? If so its effect? OPA

5. Relief.

5. The parties led oral and documentary evidence in support of their case. Issue No. 1 was decided against the landlord while issues No. 2 and 4 decided in his favour. Issue No. 3 was decided against the landlord but on the strength of the findings of the Rent Controller, on issues No. 2 and 4 ejectment was ordered.

6. Aggrieved by the order of the Rent Controller, dated 3.9.1990, the aforesaid tenant filed the appeal under Section 15 of the Act before the appellate Authority which for the reasons given in paras No. 8 to 15 of the judgment dated 16.8.1991, dismissed the appeal. Para No. 8 to 15 of the judgment of the appellate authority are reproduced as under :-

'8. The landlord to prove that the house in dispute is too old and is in dilapidated condition, has asserted that the walls have left the joints and have developed serious cracks; that the portion of the roof CDEL as shown in red colour in plan Ex.A-4 attached with the application, had fallen down in the last week of June, 1988 and that the remaining portion EFCH as shown in blue colour was likely to fall at any time. The landlord asserts that to check the appellant/tenant from taking undue advantage of summer vacation he had filed a suit for permanent injunction restraining him from making constructions/alteration. It is an admitted fact that he had instituted the said suit. There is no denial that District Judge, Ropar had granted temporary injunction restraining the appellant/tenant from making any construction/ alteration. A local commissioner has also been appointed. As is put forth by the landlord, the appellant/tenant on coming to know about the issue of injunction order, had made some alterations in the premises in dispute. That suit in view of the statement made by the counsel for Teja Singh, copy of which is Ex.R.3 was dismissed as withdrawn vide order dated 11.4.1990, copy of which is Ex.R-4.

9. The version of the landlord is that the appellant/tenant had made construction and alterations without his consent. He reiterates his version in this respect as AW2. He gets support from Sh. Chetan Kumar, Advocate AW-3 who was appointed as Local Commissioner in the said suit by the District Judge, Ropar on 5.7.1988. Copy of the report submitted by him is Ex. A-4. Copy of the rough site plan submitted by him is Ex.A-5. The spot was inspected by the Local

Commissioner on 5.7.1988 in the presence of the parties. The copy of the report reveals that portion ABCD was covered with new Sarkanda and remaining adjoining portion was covered with old Sarkanda and shatters. It is also mentioned in the report that newly constructed roof has six dandas of eucalyptus trees which were new and green. 12 new shafters are shown to have been fixed under the new roof. Shahteer has also been fixed on the walls and the same was lying temporarily supporting the roof. As mentioned in the report, it has been newly fitted as the edges were still lying loose. The roof ABCD was having soft and showing that it has been newly constructed. A hole was also visible in the newly constructed roof. According to the local commissioner, there were some cracks near the door and a big horizontal crack at point B from the roof to the ground level. The wall at that place had left the joints. There was also similar carved crack in the western wall of the property at Point 'C' as shown in the site plan submitted by him.

10. It is version of the appellant/tenant that some changes in the roof were done by the landlord himself and that the labour work was done by him. He admits that a Shahteer was replaced and fresh sarkanda was put. But there is hardly any material on the file to show that the landlord has consented to the said change. Had he been a consenting party, the question of instituting the suit did not arise. The statement of Teja Singh appellant stands contradicted by Raj Bahadur Singh appearing as RW-2 as he has stated that the defendant himself had brought the labour and mason. According to him there were 3-4 labours. But as already discussed, according to the appellant/tenant he himself had arranged the labour. The evidence adduced by the tenant indicates that the said alteration was effected in the summer vacation. So, the version of the landlord has to gain ground that the tenant had made the said alterations on coming to know about the issue of stay order from the Court.

11. Not to speak of the said alterations, admittedly there are cracks in the walls, Teja Singh appellant himself admits as such. He stated that there are cracks visible in the room as the same has not been plastered. However, according to him, the cracks are of minor nature. Prem Singh the witness of the appellant RW-3 states that major cracks are existing in the walls of the room. Thus, it has to be

stated that despite the said material alterations there are cracks in the walls of the room. The roof has been replaced by the tenant without the consent of the landlord when it had fallen down. The tenanted premises consisted of one room and a courtyard. The evidence on record indicates that substantial portion of the roof had fallen down and that the same has been replaced by the tenant without the permission of the landlord or the Court. The walls of the room as already discussed are also having cracks. When the substantial portion of the roof had fallen down and the walls are having cracks, the tenant was not supposed to reconstruct the same of his own accord to deprive the landlord of his right to seek ejectment. Once a right to seek ejectment accrues, the same cannot be snatched away. As already discussed the walls have cracks and have left the joints and the roof has been replaced. In the circumstances it has to be held without any manner of doubt that the house in dispute has become unfit and unsafe for human habitation. So, the finding of the learned Rent Controller on issue No. 2 has to be maintained.

12. The appellant/tenant is shown to have raised a Chhan without the consent of the landlord. According to the landlord, the raising of the Chhan has materially impaired the value and utility of the premises. The evidence on record reveals that it has been raised lateron. However, it is temporary construction and can be removed at any time without much expense. So, it cannot be stated that the raising of the temporary chhan has impaired materially the value and utility of the premises. So finding of the learned lower Court on issue No. 3 is also affirmed.

13. It is the version of the landlord that the premises in dispute were rented out for residential purposes and that the tenant converting the same to the commercial use, has changed the user of the premises. The appellant/tenant, however, asserts that the property was never rented out for residential purposes and that from the very start he has been running commercial business for the supply and cutting of the fodder. According to the tenant, earlier a fodder cutting machine was propelled with a diesel engine but later on electricity was obtained for the working of the same.

14. The circumstances existing on the file fully support the version of the landlord. A rent note date 20.1.1977 (Ex.A-21) is on the file showing that the premises in dispute have been rented out for residential purposes at the rate of Rs. 60/- per month. Lateron, the rent has been raised to Rs. 80/- p.m., and rent note in this respect dated 13.9.1984 (Ex.A-1) has been brought on the file by the landlord. It also shows that the property in dispute has been rented out for residential purposes. The appellant/tenant admits the execution of the two rent notes. According to the tenant, the rent note Ex. A -21 is in his hand, he categorically states that it was executed by him in favour of the landlord at the rate of Rs. 60/- p.m. and that its contents were correctly recorded. It reads that the property was rented out for residential purposes. According to him, rent note Ex.A-1 has been executed at the rate of Rs. 80/- p.m. It is also recited therein that the property has been rented out for residential purposes.

15. An instrument of tenancy is a best document to know the purpose for which the property is rented out. When in the two documents, it is hereby mentioned that the property in dispute was rented out for residential purposes it cannot be stated by any stretch of reasoning that the property has been rented out for commercial purposes. Thus, when the property apparently has been rented out for residential purposes, onus lay upon appellant/tenant to show that the change of user was effected with the consent of the landlord. The tenant has examined Raj Bahadar Singh RW-2 and Prem Singh RW-3 to prove that from the very start he has been running the fodder cutting machine in the prernjses but their testimony which is in sharp contest to the purpose of tenancy given in the rent note has to be ignored altogether. It is the plea of the tenant that earlier there was diesel engine and lateron he had obtained electric connection to run the fodder cutting machine but he has not led any evidence to show if he had obtained any electric connection and if so when. He has not produced any account though according to him he is maintaining regular account of the business. No evidence has been put forth to show that as to when the fodder cutting machine was purchased. The evidence on record reveals that when the local commissioner visited the spot, no fodder cutting machine was found there. As per report of the local commissioner, some chairs were lying in the Chhan. According to the tenant, he had purchased diesel engine by securing loan from the Marketing Society and that loan was paid by

instalments. But he has failed to bring any documentary evidence in this respect.

7. During the pendency of the appeal, the tenant also filed an application under Order 41 Rule 27 C.P.C. which was also declined for the reasons given in para No. 3 of the order of the appellant authority, which I am also reproducing as follows:-'The application for ejectment was instituted on 16.8.1988 and order of ejectment has been granted by the lower Court on 3.9.1990. The appellant seeks to tender into evidence the licence granted by the Municipal Committee for selling fodder, a voter list and a ration card to show the version that he has been coming daily to Ropar for selling the fodder from his village Khairabad and that he has been running the business of sale of fodder from the very start. He has tried to show that he is a resident of Khariabad and that he has been coming from his village Khairabad daily. It is question of common knowledge that some people have got themselves registered as voters and have got ration cards at different places. Moreover, when the additional evidence sought to be adduced was to the knowledge of the tenant, he was supposed to bring the same on the file before the Rent Controller. It is mentioned in the application itself that inadvertently he had failed to tender the documents in the lower Court. But in view of the provisions of Order 41 Rule 27 C.P.C. additional evidence can be allowed only if a party despite due diligence has not been able to bring the same on the file. Even otherwise, when the rent notes lying on the file clearly reveal that the property has been rented out for residential purposes and it is not the plea of the tenant that it has been brought under commercial use with the consent of the landlord, additional evidence as sought to be adduced cannot be allowed. The application apparently has been moved with an ulterior motive and so, the same has to be dismissed. It is ordered accordingly.'

8. Aggrieved by the aforesaid judgment and the order of the appellant authority, the present revision has been preferred.

9. During the pendency of the present revision, landlord filed an application under Order 26 Rule 9 C.P.C. for appointment of a Local Commissioner and it was alleged by him that the entire roof of the premises collapsed on 11.2.1996 and that the tenant attempted to re-construct the roof regarding which the applicant took photos and in the interest of justice a Local Commissioner should be appointed

who should go to the spot to see about the factual position of the demised premises. The application was contested by the tenant and the High Court appointed a Local Commissioner vide order dated 28.2.1996. The learned Local Commissioner inspected the premises on 2.3.1996 in the presence of the landlord. In spite of the directions given by the High Court, nobody appeared on behalf of the tenant. The Local Commissioner, however, recorded the presence of Arjan Singh and other persons. His observations are as follows:-

'1. That vide order dated 28.2.1996, this Hon'ble Court has directed me to make the inspection of premises i.e. Shop No. 2971 Mohalla Phool Chakkar Ropar on 2.3.1996 at 11.00 A.M. Accordingly, I reached the premises in dispute exactly at 11.00 A.M. Arjun Dev was present at the spot, but in spite of the direction of this Hon'ble Court, Teja Singh was not present. I recorded the presence of Arjun Dev, and other people whose shops are adjoining the premises in dispute. I prepared the Memorandum of Attendance.

Adjoining the premises in dispute is the shop with the name and style 'Bohra TV Centre' in which one Kuldip Singh is the tenant. Across the road is the shop with the name and style 'Madhvi Electrical and Repair', the owner and Proprietor of which is Raj Bahadur Singh. Also across the premises in dispute is the shop of the name and style 'Sangam Tailors' which is owned by Sukhchain Singh. On the left side from Bela chowk is the shop with name and style 'Micky Lime Store' the proprietor of which is Mr. Manjit Singh. On the back side of the premises in dispute is the house of Smt. Kartar Kaur wife of Late S. Gurdial Singh. Mr. Gurdev Singh son of Gurdial Singh was also present. On the right side of the premises in dispute is Azad Nursery. The rough site plan of premises in dispute is attached. I started my work by measuring the length of the boundary wall of premises in dispute which touches the main road i.e. Bela Road/Kalyan Cinema Road. The length of boundary wall was approximately 26ft. and its height was 6ft 2 inches. A wooden gate was fixed in it which has the length of 8-1/4ft. A lock mark 'Prince' Six levers bearing No. 144393 was affixed on the gate. I entered the premises in dispute by jumping across the gate of the boundary wall. I entered the court yard of premises in dispute, one kachha pillar of bricks pasted with 'Gara' is there. It has an approximate height of 89ft. 6 inches. From the gate of the Boundary Wall which

opens to the main road, to the gate of premises in dispute, the length of Court yard is 22-3/4.

Now coming to the premises in dispute, the front wall of it has approximate length of 24ft. 8 inches and height of 9ft 6 inches. There is a wooden gate affixed in the wall which has an approximate width of 4ft 8 inches and height of 6ft 5 inches. A lock mark Super Tal 4 Lever was affixed on it. The number of lock was not visible. The wall from the top is broken and there are two holes in the wall, and a big crack in the wall on the left side of the wall, if one enters the main gate of premises in dispute. Since the main gate of premises in dispute was also locked and Teja Singh was not present, I could not enter the premises in dispute from the gate. On the back side of the premises in dispute is the house of Kartar Kaur. I went at top of the roof of the premises in dispute with the help of a ladder from the courtyard of the house of Kartar Kaur. The exact position of the roof of the premises in dispute is that it has completely fallen except at some portion where with the help of wooden sticks, the Mud has been affixed.'

10. I have heard Shri V.G. Dogra, learned counsel for the petitioner and Shri H.S. Gill, Senior Advocate, on behalf of the respondent and with their assistance have gone through the record of this case.

11. The counsel for the petitioner made an effort at the first instance to convince me that the demised premises were taken on rent by the tenant for commercial purposes and, therefore, the Rent Controller and the appellant authority wrongly came to the conclusion that the premises in question were let out for residential purposes and that there was a change of user on the part of the tenant. In support of this contention, the learned counsel submitted that though the rent note makes a clear mention that the demise premises were let out for residential premises yet at the most it is an admission which can always be shown as erroneous and attending circumstances would show that the admission of the tenant in the rent note was erroneous and that he took the premises in fact for commercial purposes and had been using the premises right from the very beginning for commercial purposes. He also submitted that the learned appellate authority wrongly rejected the request of the tenant under Order 41 Rule 27 C.P.C. According to the learned

counsel, the proposed additional evidence was necessary for the determination of the real controversy and should have been allowed. The counsel also attacked the findings of the Courts below that the premises in question are unsafe and unfit for human habitation.

12. On the contrary, the judgments of the Courts below and the order, have been supported by Mr. Gill. I have considered the submission of Mr. Dogra and in view of this Court, these are without any merit.

13. First of all, I will deal with the order of the appellate authority vide which the application under Order 41 Rule 27 C.P.C. was disallowed. Order 41 Rule 27 C.P.C. lays down that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court but if-

(a).....,

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed,

(b) the Appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

14. Thus, the reading of this Section would show that it starts from negative note by stating that parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary. Meaning thereby it is. not the absolute right of the party to call upon the Court at any time and at any stage in the appeal to admit oral or documentary evidence by way of additional evidence. Such additional evidence, however, can be admitted for the ground which have been set forth in this order. Through the proposed evidence, the tenant wanted to place on record the licence granted by the Municipal Committee for selling fodder, voters list and ration card. Through voters list and ration card the tenant wanted to show

that he had been residing in a village and, therefore, there was hardly any purpose for him to take the premises on rent for residential purposes. In the view of this Court, the proposed additional evidence was hardly required by the appellate Court to enable it to pronounce the judgment on the controversy involved in it. It is established on the record that the tenancy in this case was written one through rent note Ex.A-1. It is signed by Teja Singh acknowledging the terms of the tenancy. A reading of the same clearly shows firstly the nature of the premises. It has been written in the rent note that the demised premises were in the shape of a Pucca Makan (Makan Pukhta). The purpose of tenancy has also been categorically stated. Teja Singh had undertaken through rent note Ex.A.1 that he had taken the premises on rent for his personal residence. In this view of the matter, the point for determination before the Rent Controller or the appellate authority was whether Teja Singh was using the premises in question for a purpose other than that for which it was leased. Again, there is a clear recital in the rent note by Shri Teja Singh that these premises are in occupation with him for residential purposes since, 1971. The rent note was executed on 13.9.1984 admitting the terms of the tenancy. In these circumstances, the application under Order 41 Rule 27 C.P.C. has rightly been rejected. Moreover, these documents must be in the possession of the tenant right from the very beginning and, he could produce those documents at the trial stage. In these circumstances, it cannot be said that there was due diligence on the part of the tenant.

15. The rent note Ex.1.1 clinches the issues and it is established on the record that the demised premises were taken on rent for residential purposes. The point thus, survives for determination is whether the tenant has changed the user of the premises or not. It is his own case that he is doing the business of fodder. Earlier the tenant was occupying the premises which was rented out to him for residential purposes at the rate of Rs. 60/- per month but later on the rent was increased to Rs. 80/-. The instrument of tenancy can be safely relied upon. The statements of Raj Bahadur and Prem Singh, prove this fact that the tenant is doing the business of fodder. He had even obtained an electric connection to run the fodder cutting machine. It will be a change of user and, therefore, the tenant is liable to be evicted on this ground.

16. With regard to, whether, the premises have become unsafe and unfit for human habitation, it stands proved from the report of the Local Commissioner, Shri Chetan Kumar, who was appointed as Local Commissioner vide order dated 5.7.1988, and he gave report Ex.A.4. The reading of the report would show that portion marked ABCD was covered with new Sarkandas and the adjoining portion was covered with old shatters. It is also stated in the report that newly constructed roof has six Dandas. Moreover, there was some cracks near the door. There was a big horizontal crack, at point 'B' from the roof to the ground level. The wall at that place had left joints. There was similar carved crack in the western wall of the property at point 'C'. Even the statement of Teja Singh shows that there are cracks in the demised premises. As per the statement of Shri Prem Singh RW-3, there are major cracks in the wall so much so the roof has been replaced by the tenant without the consent of the landlord when it had fallen down. The appellate authority has rightly observed that the record indicates that substantial portion of the roof had fallen down and that the same had been replaced by the tenant without the permission of the landlord or the court and that when the substantial portion of the roof had fallen and the walls had developed in the cracks, in such a situation, it can be safely held that the premises have become unsafe and unfit for human habitation.

17. Moreover, the report of the Local Commissioner, appointed by the High Court itself would show that the wall had broken. There were two big holes besides a big crack. As per the report of the Local Commissioner, the exact position of the roof of the premises in dispute is that it has clearly fallen except at some portion where with the help of wooden sticks the mud has been affixed. I have also seen the photographs Ex.C.1 to C-7, which were taken at the spot by the Local Commissioner appointed by the High Court and bare glance of these photos can tell a long about the condition of the demised premises and it can be said with certainty and vehemance that the demises premises have totally become unsafe and unfit for human habitation. It will not be wrong on my part if I say and observe through photographs that the demised premises in question have taken the shape of a Khola. There is no roof over the room. The wooden Ballas have given in with the passage of time. Even against the portion of the wall, there is a temporary support. Both the Courts below have rightly, after appraising the entire evidence,

come to the conclusion that the premises in question have become unsafe and unfit for human habitation and the revisional authority, in these circumstances, would be slow to interfere in such findings unless it is established and shown to the revisional authority that there was a wrong appreciation of evidence. I have gone through the reasons of the Rent Controller as well as the appellate authority and fully endorse the same. Learned counsel Shri Dogra has not been able to point out any circumstance from which I may be in a position to come to a different finding than that of the Rent Controller and the Appellate Authority.

18. Thus, the discussion concludes by holding that the application under Order 41 Rule 27 C.P.C. has been rightly dismissed by the appellate authority. The proposed additional evidence was not likely to advance the case of the petitioner in view of the fact that the terms of the tenancy clearly establish that the demised premises were taken on rent for residential purposes and that the tenant has changed the user. Also it is established that the demised premises have become unsafe and unfit for human habitation. The premises are totally neglected and were giving an impression as if the tenant was not occupying the premises for a pretty long time.

19. Resultantly, I do not see any merit in this revision-petition and dismiss the same and direct the tenant, now represented by his legal representatives to vacate the demised premises within one month from today by handing over the actual physical possession to the landlord, failing which, it will always be open to the landlord to take possession of the premises in question through the Court of law. No order as to costs.