

Kailasho Devi Vs. Chhabi Parkash

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Court : Punjab and Haryana

Decided On : Jul-07-2004

Reported in : (2004)138PLR382

Judge : M.M. Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 18, Rule 18; [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 13(3)

Appeal No. : Civil Revision No. 2722 of 1983

Appellant : Kailasho Devi

Respondent : Chhabi Parkash

Advocate for Pet/Ap. : Amarjit Markan, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This is tenant's petition filed under Section 15(5) of the [East Punjab Urban Rent Restriction Act, 1949](#) (for brevity, 'the Act') challenging findings of facts recorded by the learned Appellate Authority, Sangrur in its judgment dated 10.10.1983. The learned Appellate Authority has relied upon the findings recorded by the Rent

Controller on the issue as to whether the building has become unfit or unsafe for human habitation.

2. Brief facts of the case are that landlord respondent Chhabi Parkash filed an application under Section 13(3)(a)(iii) of the Act seeking ejectment of the tenant-petitioner, inter alia on the ground that the building has become unfit or unsafe. The landlord respondent has examined an expert, namely, Shri Parshotam Singh, Sub Divisional Officer who has proved his report Ex.A1 and has opined that the building has become unfit and unsafe for human habitation. The aforementioned expert was not subjected to any cross examination at the instance of the tenant-petitioner. However, the Rent Controller himself visited the spot and recorded an inspection note. He concluded that although the construction is very old, yet the building appears to be sound. On the basis of his inspection note, the Rent Controller dismissed the petitioner filed by the landlord-respondent. The learned Appellate Authority on appeal, accepted the appeal by concluding that inspection note of the Rent Controller was silent on material particulars and it did not reveal that he in fact went on the roof to find out holes in the roof and that he had tested soundness of the sleepers underneath the roof. Some other reasons have also been recorded by the Appellate Authority in support of the conclusion that the building had in fact become unfit or unsafe for human habitation. The view of the Appellate Authority can be gleaned from paragraph 13 which reads as under:-

'Age of the building is more than 50 years old and the construction is of third class category. In fact the quarters including the premises in dispute had been built with old material.' Certainly the flooring is kacha. The walls have been laid in mud mortar, the roof is made of wooden sleepers and of mud. Even the learned Rent Controller observed that the building is an old built and looks like a servant's quarter. The construction is third class and made in a haphazard manner. The Inspection Note does not indicate if he inspected the roof from the top to find out if there were any holes in the roof or those have been covered with mud. The note also does not indicate as to how he tested the wooden sleepers to know about their condition and fitness. The note is also silent about the quality of the bricks used in construction. According to Sh. Parshotam Singh 50% of the bricks used were under-burnt and third grade i.e., Pilla bricks. According to Shri Parshotam

Singh red-powder falls out of those under-burnt bricks. Certainly no cross examination was directed against Parshotam Singh AW4 as to the condition of the disputed premises given by him in his report Ex.A1 and in his statement as AW4. Even the learned Rent Controller had conceded this position in the judgment. Not to speak of the evidence of the Expert Shri Parshotam Singh even the applicant (AW1) had not been cross examined regarding the condition of premises in dispute. The respondent and her witnesses had also not specifically deposed about the condition of the premises in dispute. They only stated that the quarters are in the same condition in which those previously were. None of them stated about the quality of the bricks used, quality of the wooden sleepers or roof etc. in the holes in it (sic ?). In such circumstances, in my opinion, the learned Rent Controller seriously fell into error in discarding the evidence of Sh. Parshotam Singh and substituting his own opinion in his place. At the cost of repetition it may be said that the learned Rent Controller did not state in his Inspection Note as to the quality of the bricks used or the inspection of the roof from the top or how he tested or examined the wooden sleepers. It is a third class structure more than 50 years old and to add to it, it had been raised with old material. In my opinion, therefore, it cannot be said that the premises in dispute were fit for human habitation. It is pertinent to note that eviction of the tenant can be ordered from the premises even if the premises have become unfit or unsafe for human habitation. The authority in Mangat Rai's case (1977(2) R.L.R. 645) cited above does not much help the tenant-respondent because in that case Experts had been examined on both sides and the Rent Controller in his Inspection Note had made certain observations in order to appreciate the evidence of Expert witnesses but in the instant case there was no question of appreciation of evidence of Shri Parshotam Singh AW4, particularly when his evidence had not been challenged in cross-examination and no counter Expert was examined but the tenant-respondent. The respondent and her witnesses even did not orally rebut the evidence led by the applicant-landlord.'

3. Mr. Amarjit Markan, learned counsel for the tenant-petitioner has argued that under Order XVIII Rule 18 of the Code of Civil Procedure, 1908 (for brevity, 'the Code') the court is competent to inspect the spot and record an inspection note on the basis of its own inspection. According to the learned counsel, the opinion

expressed by the Rent Controller in his inspection note deserves to be accorded an absolute reliability because of dispassionate approach adopted by the Courts. In support of his submission, the learned counsel has placed reliance on four judgments of this Court in the cases of Mangat Rai v. Gurdial Singh,¹ 1977(2) R.L.R. 645; Sohan Lal (Died) through LR's v. Amar Nath and Ors. of Ludhiana,² (1992-2)102 P.L.R. 173; Jita Ram and Anr. v. Sham Lal and Anr.,³ (1993-1)104 P.L.R. 29 and Mohar Chand v. Daljit Kaur,⁴ (1994-1)106 P.L.R. 143. According to the learned counsel, the Rent Controller has condemned the report Ex.A1 submitted by Shri Parshotam Singh PW4 on the ground that it was false because when he inspected the premises, no holes were found whereas in his report he has indicated the presence of holes. Similar observations have been made with regard to the effect of ants on the sleepers of the roof. The learned counsel maintained that the inspection note prepared by the Rent Controller should have been accepted as a substantive evidence in place of Ex.A1 which has been found to be false. The learned counsel has further argued that even if the report Ex.A1 is totally accepted, the building can still not be declared unsafe and unfit because mere hollowness or effect of ants on the sleepers or age of the building would not constitute the basis for the conclusion that the building has become unfit or unsafe for human habitation.

4. No one has put in appearance on behalf of the respondent.,

5. Having heard learned counsel for the tenant-petitioner, I am of the considered opinion that this petition is devoid of merit and is liable to be dismissed. The learned Appellate Authority has pointed out many factors which would lead to a conclusive view that the demised premises is unfit and unsafe for human habitation within the meaning of Section 13(3)(a)(iii) of the Act. The features pointed out by the learned Appellate Authority are that (a) age of the building is more than 50 years; (b) the quality of construction is third class (c) the construction has been raised with old material; (d) the floor is kacha; (e) the walls are laid with mud and mortar; (f) the roof is made of wooden sleepers and of mud; (g) 50% of the bricks used are half burnt bricks as per the opinion of the expert Sh. Parshotam Singh; (h) no cross-examination was conducted on Sh. Parshotam Singh who proved his report Ex.A1; (i) the respondent and his witnesses have

failed to depose about the condition of the demised premises; and (j) the inspection, note of the Rent Controller is silent in material particulars.

6. I am of further opinion that under Order XVIII Rule 18 of the Code, inspection by the Court can be undertaken only with a view to appreciate evidence with the object to avoid any confusion. It is appropriate to make reference to Order XVIII Rule 18 of the Code which reads as under;-

'18. Power of Court to inspect- The Court may at any stage of a suit inspect any property or thing concerning which any question may arise [and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.]'

7. A perusal of the above extracted rule shows that the Court is entitled to inspect the demised premises at any stage of a suit. It also imposes an obligation on the court that it must make a memorandum of any relevant facts observed by it, at any stage of inspection which shall form a part of the record of the suit. Rule 18 of Order XVIII of the Code came up for consideration of the Supreme Court in the case of *Ugam Singh and Anr. v. Kesrimal and Ors.*, 5 A.I.R. 1971 S.C. 2540 where the Supreme Court has recognised the power of the Court to inspect the demised premises at any stage for the purpose of appreciating evidence. It has also been held that inspection can be undertaken only if there is some confusion created by the evidence already adduced. Therefore, it is only in cases of confusion or to appreciate the evidence in a better way that the Court is required to undertake inspection. The Court cannot base its judgment solely on the basis of inspection note recorded by it.

8. When the aforementioned principles are applied to the facts of the instant case, it is revealed that Shri Parshotam Singh, Sub Divisional Officer AW-4 was examined as an expert by the landlord-respondent and he proved his report Ex.A1. No cross-examination was conducted by the tenant-petitioner on the report proved by Shri Parshotam Singh or his statement made before the Court. The report Ex.A1 and the testimony of the expert has proved beyond doubt the dilapidated condition of the demised premises. There was hardly any need for the

Court to undertake inspection because the expert witness clearly stated about the condition of the demised premises and there was hardly any confusion. Moreover, the Appellate Authority has not completely discarded the inspection note prepared by the Rent Controller. The Appellate Authority has pointed out various features of the inspection note on which it is silent. For example, the inspection note does not disclose that how the Rent Controller has recorded that there were no holes in the roof as the inspection note does not say that the learned Rent Controller himself went on the roof. Similarly, the inspection note is silent about the fitness of wooden sleepers on which the roof has been laid, whereas the expert has pointed out that the hollowness of the sleepers was evident when he checked the same with the help of a rod. The Appellate Authority has, thus, taken the inspection note into consideration and then has reached the conclusion that the demised premises is unfit for human habitation, although it may not be unsafe. Therefore, I do not find any legal infirmity in the findings recorded by the learned Appellate Court.

9. The argument of the learned counsel based on the judgment of Mangat Rai's case (supra) and Mohar Chand's case (supra) to the effect that the inspection note of the Rent Controller must be considered as substantive piece of evidence, cannot be accepted because in both the cases, the inspection note of the Rent Controller or the report of the Local Commissioner were considered substantial evidence as they were not inconsistent with the oral evidence or other evidence available on record. In the present case, the statement of expert has already been recorded who was not even subjected to any cross-examination by the tenant-petitioner which clearly indicated the dilapidated condition of the demised premises. Firstly, there was no occasion for the Rent Controller to undertake an inspection in these circumstances. Secondly, the inspection undertaken by him is inconsistent with the statement made by the expert. In these circumstances, the ratio of the judgments in Mangat Rai's case (supra) or Mohar Chand's case (supra) would not be applicable.

10. The other argument based on the judgment of this Court in Sohan Lal's case (supra) to the effect that mere age of the building would not be conclusive to record a finding that the tenanted premises has become unfit and unsafe can also not be accepted. There can hardly be any quarrel with the above mentioned

proposition. Even if a building is more than 50 years old and class of construction is such that it is fit and sound then no ejectment order could possibly be passed and mere age of the building would not indicate that it has become dilapidated. However, in the present case, there are number of features apart from the age of the building which would show that the demised premises is in a dilapidated condition and is not fit for human habitation. No benefit could be derived by the learned counsel from the judgment of this Court in Sohan Lal's case (supra). Therefore, the argument is without any merit and I have no hesitation to reject the same. 11. For the reasons recorded above, this petition fails and the same is dismissed