

Raj Kumar Vs. Pushpa Devi

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Court : Punjab and Haryana

Decided On : Jul-08-2004

Reported in : (2004)138PLR405

Judge : M.M. Kumar, J.

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

Appeal No. : Civil Revision No. 2814 of 2003

Appellant : Raj Kumar

Respondent : Pushpa Devi

Advocate for Def. : B.D. Sharma, Adv.

Advocate for Pet/Ap. : S.C. Pethela, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. Raj Kumar tenant-petitioner has approached this Court by filing the instant petition under Section 15(5) of the [East Punjab Urban Rent Restriction Act, 1949](#) (for brevity, 'the Act') challenging judgment dated 7.4.2003 passed by the Appellate Authority, Muktsar. The Appellate Authority has ordered ejection of the

tenant-petitioner on the ground that the tenant-petitioner has effected material alterations without permission of the landlady-respondent.

2. The landlady-respondent filed an ejectment petition under Section 13 of the Act against the tenant-petitioner alleging that the demised premises was rented out to the tenant-petitioner on 28.6.1989 on an agreed rate of rent of Rs. 900/- p.m. A rent note was duly executed in favour of the landlady-respondent. It was further alleged that material alterations have been made by the tenant-petitioner. She has averred in her ejectment petition that as per rent note the demised shop is 7-1/2 feet high and beyond 7-1/2 feet further roof has been constructed with the first upper storey constructed beyond 7-1/2 feet roof of the demised shop. It has been further alleged that two other shops adjoining demised shop also have 7-1/2 feet height. On the roof of the above said two shops and the demised shop, one gallery of 5 feet in height has been constructed. On the said gallery further roof has also been constructed. It has been alleged that the tenant-petitioner without the permission of the landlady-respondent in a clandestine manner during the night time had broken the roof of the shop in dispute and raised walls on both sides of the gallery. The aforementioned portion of the gallery has been illegally included in the demised shop. On 14.7.1996 Vinod Kumar who has been occupying the said gallery in his business, Vinod Kumar who has been occupying the said gallery for his business, lodged FIR No. 48 at Police Station City Muktsar. There are allegations of further material alterations by raising walls in front of the shop upto the height of 1-1/2 feet from the level of the floor.

3. The stand taken by the tenant-petitioner is that alterations have been effected by the landlady-respondent and the allegations leveled against him were false. The alterations have been made for creating evidence to evict the tenant-petitioner. It was offered by the tenant-petitioner to restore the shop in its original position. Further allegations levelled by the landlady-respondent to the effect that tenant-petitioner has raised wall by raising its floor level were denied by him. The ground of personal necessity was also denied.

4. The learned Rent Controller dismissed the petition of the landlady-respondent by holding that the tenant-petitioner was not in arrears of rent nor there was any

material alteration effected by him. The ground of personal necessity was also negated by the learned Rent Controller. On appeal, the Appellate Authority reversed the findings on issue No. 2 concerning material alterations by the tenant-petitioner and findings on other issues were affirmed. The learned Appellate Authority made a detailed reference to the statement made by Vinod Kumar AW-7 son and attorney of the landlady-respondent, copy of the first information report lodged by Vinod Kumar at Police Station City Muktsar as Ex.P2: statement of Dalip Singh AW-1 and site plan Ex.A1, AW-2 Constable Kashmir Singh, AW-3 Dhanna Singh retired SDO who inspected the premises in presence of the parties, his report Ex.A4 and site plan prepared by him Ex.P5. A detailed reference has also been made to the statement of Mr. Ashok Kumar Bansal, Advocate who was appointed as Local Commissioner and inspected the spot on 12.8.1996 and his report Ex.A4/4, photographs Exs.A4/C to K, negatives Exs.A4/L to Q and H is rough report Ex.AW4/R. The statement of Sampuran Singh AW-5 has also been referred to who has proved the site plan prepared by him on 24.2.1992 Ex.AW5/A.

5. The Appellate Authority has also duly considered the evidence produced by the tenant-petitioner who has himself appeared as his own witness as RW-4, the statements made by RW-2 Constable Kashmir Singh, RW-3 Balwant Singh, RW-1 Ghansham Dass have also been referred to. On the basis of the aforementioned discussion of evidence adduced by the parties and the various contentions raised before the Appellate Authority, it reached the conclusion that material alterations have been carried out by the tenant-petitioner. The view of the Appellate Authority reversing the findings of the Rent Controller reads as under:-

'The size of the shop is not 2-1/2' x 4-1/2' but it is 6'.6' x4'.9' as is clear from site plan Ex.A1 and an old site plan Ex.AW5/A. It is, therefore, possible to stand within this shop and to raise the construction of two walls on its Northern and Eastern side. It may be stated here that the original roof in the shop at a height of 7-1/2' has been demolished but no new roof has been added because the earlier roof on the gallery above the shop has served as the new roof of the shop after removal of the intervening roof. The local commissioner vide his report Ex.AW4/A found that a 5 ft wall within the shop had been constructed in a haphazard manner which touched the roof of the gallery above. The FIR regarding the alteration was lodged

by Vinod Kumar son and attorney of the landlady and no counter FIR was either lodged by the tenant nor he filed any complaint in the court or before any other competent authority against the landlady. The specific allegation of the landlady supported by evidence is that alterations were made by the tenant stealthily during the night. It is the evidence of the tenant that these alterations/construction require atleast one day to raise. It is not the case of the tenant that the landlady made the alterations and raised the construction during the night or stealthily. In case the landlady has made the constructions and that too during the day and from out side, the fact would have come to the notice of the tenant and he would have resisted it. It is not his case that the landlady made the alterations and the construction with his consent. In case she had made it without his consent, then there would have been damage to his goods lying in the shop but there is no such allegation or evidence of the tenant. It has been held in 1. Union of India and Commissioner of Income Tax. Patiala v. Joginder Singh son of Sher Singh, 1983(2) Rent Controller Reporter 467 that where there are two versions as to who raised the disputed construction, in the absence of any cogent evidence a very material circumstance has to be taken into consideration which is that if the landlord had made the alteration or raised the construction, he would have enhanced the rent and varied the terms of lease. It is not the case of the tenant in the present case that the landlady raised the construction with his consent and it been so then in the face of the earlier litigation between the parties, she would have enhanced the rent because she was raising the height of the roof of the demised shop. The only beneficiary of this (sic ?) raising of this height was the tenant, the actual occupant of the shop. The land lady was not going to be benefited by this alteration. In case the land lady had raised the construction then it would not have been haphazard. All the circumstances therefore, go to prove the version of the land lady that the alternation has been made by the tenant and not by her. Had the land lady done the mischief, the wet cement and broken brick pieces would have caused damage to the shop, immediately provoking the tenant to approach the neighbours and to call a photographer to take the photographs of the situation. However, no such steps were taken by the tenant. The land lady could not obviously take such steps because the shop was not in her physical possession but was in the possession of the tenant and because by the time she

managed to get order from the Rent Controller for a local commissioner the tenant would have cleaned the shop to wipe out any signs of the alterations and broken cement and brick pieces. The things as they stand are advantageous to the tenant and point to the only conclusion that it was the tenant who made the impugned alterations/constructions.'

6. The learned Appellate Authority further recorded the conclusion that removal of the intervening wall by including the space of the gallery into the shop has resulted into impairment of its value and utility. It has also been found that the gallery was in occupation of the son of the landlady and was part of larger balcony existing on the demised shop and two northern shops belonging to the landlady. Thus, the tenant-petitioner has deprived the landlady and her son of the use of that part of the gallery which existed over the roof for the demised shop.

7. Mr. S.C. Pathela, learned counsel for the tenant-petitioner has made an attempt to persuade me to take a view different than the one taken by the Appellate Authority by arguing that the dimensions of the shop are such that no mason could possibly stand within the shop for effecting alterations. According to the learned counsel the size of the shop is 2-1/2' x 4-1/2'. Therefore, no repair could have been carried at the instance of the tenant-petitioner. According to the learned counsel the landlady-respondent has carried the repairs in order to create a ground of ejection of the tenant-petitioner.

8. Mr. B.D. Sharma, learned counsel for the landlady-respondent has pointed out that the Appellate Authority has made a detailed reference to the site plan Ex.A1 and the old site plan Ex.AW5/A which abundantly proves that size of the shop is 6'x6' x 4'x9'. It is on the basis of this evidence that the learned Appellate Authority has recorded the aforementioned findings. The learned counsel has then referred to the detailed discussion by the Appellate Authority in paragraphs 12, 13, 14, 15 and argued that these findings of facts do not warrant to be interfered with by this Court while exercising powers under Section 15(5) of the Act as the findings are based on cogent evidence. The learned counsel has stressed that no legal lacuna can be found in the order passed by the Appellate Authority.

9. After hearing learned counsel for the parties at a considerable length, I find that the view taken by the Appellate Authority deserves to be upheld because the findings recorded by the Appellate Authority with regard to material alterations are based on cogent evidence. There is no unwarranted inference drawn by the Appellate Authority which may justify intervention of this Court. No legal infirmity in admission of any piece of evidence and the findings as such has been pointed out. The argument that the landlady-respondent herself carried changes in the demised shop does not deserve to be accepted because it is tenant who has been in possession of the demised premises. No reasonable tenant would allow the alterations to be carried unless some arrangements in writing are made between the parties.

10. The possibility of standing in the shop by a mason for repairing the demised shop has been accepted by the Appellate Authority by making reference to the site plan Ex.A1 and the old site plan Ex.AW5/A. It shows that size of the shop is 6'x6' x 4'x9'. It has further been found that utility of the premises has been reduced by permanent alterations made by the tenant-petitioner. It is well settled that once the findings with regard to material alterations without the consent of landlady-respondent have been recorded on the basis of evidence alongwith the findings that there is material impairment of value and utility, then there is no escape from the provisions of Section 13(2) (iii) of the Act. The aforementioned provision has been subject matter of interpretation of the Supreme Court in numerous judgments including the cases of Vipin Kumar v. Roshan Lal Anand,² (1993-2)104 P.L.R. 349 (S.C.); Gurbachan Singh v. Shivalak Rubber Industries,³ (1996-2)113 P.L.R. 69 (S.C.) and Waryam Singh v. Baldev Singh,⁴ (2003)1 S.C.C. 59. In the afore mentioned judgments it has been held that once there is permanent construction raised by the tenant without the consent of the landlord and the same has been found to have impaired materially the value or utility of the demised premise then the tenant is liable to be ejected. It has further been held that the impairment of value and utility of the demised premises has to be examined from the point of view of the landlord and not of the tenant. Therefore, on principle as well as precedents, no interference by this Court is warranted and the petition is liable to be dismissed.

11. For the reasons recorded above, this petition fails and the same is dismissed.
No cost.

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