

Mohinder Pal Vs. Hari Das

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Court : Punjab and Haryana

Decided On : May-25-2000

Reported in : (2000)126PLR563

Judge : S.S. Sudhalkar, J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 13(3) and 15(5)

Appeal No. : Civil Appeal No. 3170 of 1999

Appellant : Mohinder Pal

Respondent : Hari Das

Advocate for Def. : P.K. Gupta, Adv.

Advocate for Pet/Ap. : Neena Madan, Adv.

Disposition : Petition dismissed

Judgement :

S.S. Sudhalkar, J.

1. This revision petition has been filed by the tenant against whom eviction order was passed by the Rent Controller and the same was affirmed by the appellant authority. The eviction was sought by the respondent-Landlord on the following grounds:

(i) Non-payment of rent.

(ii) Premises have become unfit and unsafe for human habitation.

(iii) respondent has committed such acts which have materially diminished the value and utility of the shop in dispute.

2. The Rent Controller ordered eviction on the grounds of premises having become unfit and unsafe for human habitation and the petitioner's having materially diminished the value and utility of the premises. The appellate authority maintained the finding regarding the premises having become unfit and unsafe for human habitation though it reversed the finding regarding diminishing the value and utility of the premises by the respondent. Ultimately it maintained the order of eviction against which this revision has been filed as stated above.

3. I have heard learned counsel for the parties.

4. Counsel for the petitioner-tenant has tried to show that the leased out part of the premises which can be termed as a premises (premises in question) has not become unsafe and unfit for human habitation though the said may be the position regarding the other part of the building in which the premises are situated. The premises in question consists of two rooms in a building which is double storeyed having three shops and a chaubara over all the three shops. The ground floor portion on which the shops are situated consists of two rooms. The respondents have produced the sketch of the building at Ex.A-2. The tenant witness has also produced sketch at Ex.R1. So far as situation of the rooms is concerned, there is no dispute regarding the same.

5. Learned counsel for the petitioner argued that the premises in question are in sound position while learned counsel for the respondent argued that the whole building including the premises in question has become unfit and unsafe for human habitation. Mr. Jyoti Saroop Sehgal, Advocate (RWI) who was appointed as Local Commissioner has deposed while appearing as RWI that he visited the spot as per direction of the court on 7.8.96 in the presence of the parties and other persons who are mentioned in the memo attached with the report. He went on the

roof through the residential portion, again said through the stair case adjoining the next shop on the main road. It is further stated by him in his deposition that it was a rainy day when he visited the spot in question. He detected malba which was about one foot in height and included fresh tiles, wooden batten etc. and there was no outlet of water to flow on the road and the rainy water was concentrating through the malba in the disputed shop.

6. RWI has further stated in his deposition that he also visited the premises in question which is a shop. The water had accumulated on the roof and was trickling down in the shop in question and the general goods of the respondent (present petitioner) were lying in a notch potch condition. The respondent-tenant collected the goods to save them from rainy water. He prepared his report which is Ex. R1, presence sheet Ex. R2 and site plan Ex, R3. The photographs taken by the photographer are Mark A to Mark F.

7. So far as the position of the premises in question so as to treat the same unfit and unsafe for human habitation is concerned, this witness (RWI) has not thrown any light in his examination-in-chief. He has stated in his -examination that the entire building is in dilapidated condition. In his cross-examination he has further stated that it is wrong that he saw any collapsed portion or cracked portion of the building. In the end he has stated that it is wrong to suggest that the entire building is unsafe and unfit for human habitation and that it is incorrect that the building can collapse at any time. He has not drawn any distinction between the premises in question and the other part of the building so far as his opinion is concerned. Moreover, the examination-in-chief of this witness proves to be of no use to the petitioner-tenant despite that he is examined as a witness of the petitioner tenant.

8. The petitioner-tenant has examined Pritam Singh Dhallwal, SDO, B&R; Building Expert as RW6, as an expert to opine regarding the condition of the premises in question. This witness also given his report which is at Ex. RW6/A. According to this expert the property in dispute is safe for human habitation. There are no cracks, no bulging out and all walls are in plumb, very strong and sound for human habitation and there is no danger of the construction on any human being. When cross-examined this witness has stated that there was no support in the form of

prop, rafter under the planks. The planks are original and have been laid at the time of the construction of shop covered with earth cushion and tile tarris. He has also stated that he cannot say as to the photographs EXs. A3,A4,A5,and A6 are of room No. 1, the roof in which supports have been given to the roof structure. He has further stated that it is incorrect that he has not deliberately got snapped photographs Ex. RW6/F avoiding the props and rafters. He has denied that there was no chiselling of plasting done. There was no buldges. He has further stated that he cannot say any part of roof is fallen off he again said the roof was not there.

9. As against this, the respondent-landlord has examined expert AW1 Jagjiwan Kumar Gupta and his report is at Ex.A.1. Ex.A2 is the site plan prepared by him. This witness has reported regarding the whole building. It can be seen that according to the report rooms No. 4 and 5 in the unit No. 3906 are in the possession of the petitioner-tenant. According to him he had taken photographs marked A.B.C and D. Photograph 'A' shows one newly provided support to the roof structure for strengthening the roof by providing a prop. According to the report of this witness, there is depression in the front wall showing the buldging of the wall, which can also be seen in photograph marked 'E' of the front wall from out side. Another photograph shows wooden planks eaten by white ants. Another photograph shows crack on the front wall. So far as room No. 5 is concerned, according to report Ex.A1, the roof is of wooden battens and appears to have been replaced about 7 years ago but at present is depressed and sagged, in the middle. According to his report cracks have developed in the walls.

10. This witness Jagjiwarr Kumar Gupta appeared as AW1 and has stated in his deposition that he has seen the entire portion including the premises in question i.e. 2 rooms in unit No. 3906. The opinion given by this witness in this examination-in-chief is that the property is lower than 'B' Class construction as per PWD norms and is about 90 years old and has completely outlived its life and utility period. He has further stated that it has developed numerous cracks, part of it has already fallen and the property has become unfit and unsafe for human habitation and need to be pulled down and reconstructed in public interest. In the cross-examination he has stated that there are two rooms marked room No. 4 and

5 in possession of the petitioner. The roof of these two rooms is different. The roof of room No. 4 is original and of room No. 5 appears to have been relayed (it should be replaced), seven to eight years ago.

11. The lower appellate court in its finding has observed that the evidence led by the respondent would go to show that substantial part of the integrated larger building in the present case has become unfit and unsafe for human habitation and that AW1 Jagjiwan Kumar Gupta has given elaborate report regarding the condition of the building including the portion in occupation of the respondent. He has referred to the opinion given by the witness that the property is lower than B-Class construction as per PWD norms and is about 90 years old and has completely outlived its life and utility period and has developed numerous cracks, part of it has already fallen and the property has become unfit and unsafe for human habitation. Class of the building like A or B is immaterial for deciding the issue in question. Of course because of the cracks, the building is likely to fall down and endanger the life of others and that would be material for the decision of this case.

12. Counsel for the petitioner-tenant has cited the case of Pitamber Lal v. Ram Lal and Ors. 1984(2) R.L.R. 491. It is a judgment of this court in which it has been held that if there are cracks in the building no inference can be drawn about its condition and the condition of the building is a question of fact in each case and is to be determined on evidence on record.

13. Learned counsel for the petitioner has also cited the case of Munna Devi v. Daropati Devi and Ors., 1991(1) RCR 340. It has been held therein that there was no allegation in the petition that building cannot be reconstructed and rebuild without vacating the same and that in order to succeed on the ground that the building has become unfit and unsafe for human habitation and is required for rebuilding, the landlord must specifically allege that the rebuilding or reconstruction cannot be carried out without vacating the premises. It is a judgment of Himachal Pradesh High Court. However here is a distinction between the Rent Act in Himachal Pradesh and in the [East Punjab Urban Rent Restriction Act, 1949](#) (hereinafter referred to as 'the Act'). Section 13(3)(iii) of the Act reads as under:

'In the case of any building or rented land. If requires it to carry out any building work at the instance of the government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation;'

On reading of this section as a whole, if the premises has become unsafe and unfit for human habitation, it is not required to be considered as to whether the reconstruction could be carried out without evicting the tenant.

14. Learned counsel for the petitioner has also referred to the case of Amar Nath alias Mothu v. Kishen Kaur and Anr., (1982)84 P.L.R. 28. In that case it was held by this court that when in the petition it was alleged that two portions of building rented separately to two tenants had become unsafe and unfit for human habitation and when only one tenanted portion found unfit and unsafe for human habitation, the appellate authority has drawn a patently erroneous assumption or inference from the fact that since the portion in possession of the other tenant and the landlady had become unsafe and unfit for human habitation the premises in possession of the petitioner should also be assumed to be in the same state of affairs and it may be held to be unsafe and unfit for human habitation is wholly unfounded and without any basis.

15. learned counsel has also referred to the case of Piara Lal v. Kewal Krishan Chopra, 1988(2) R.L.R. 181. It has been held by the Supreme Court in that case that falling down of roof of one room will not by itself be considered as sufficient to warrant a finding that the entire building had become unfit and unsafe for human habitation unless the evidence warranted an inference that the falling down of the roof was fully indicative of the damages and weak condition of the entire building and that the collapse of the roof was not a localised event.

16. It has been decided by this Court in the case of Sohan Lal through LRs v. Amar Nath and Ors. 1999(1) R.L.R. 277 that solely the building being old one is no ground to assume or infer that it has outlived its life and is unsafe and unfit for human habitation.

17. From the above authorities, it is clear that merely because the building is old one, it cannot be said to be unsafe and unfit for human habitation. Moreover, if the other part of the building has fallen down by itself it will not mean that the premises in question are also unfit and unsafe for human habitation. In the light of these principles, it will be proper to appreciate the evidence of the parties. The lower Appellate Court has, as mentioned above, considered that the substantial part of the integrated large building has become unfit and unsafe for human habitation. That finding will not help the respondent in any way. However, the lower Appellate Court has also come to the conclusion that AW-1 Jagjiwan Kumar Gupta has given elaborate reasons regarding the condition of the building including the portion in occupation of the respondent. The report and the deposition of this witness to some extent has to be discarded. The opinion of this witness that the property is lower than B Class as per PWD norms has to be ignored. His opinion that the property is 90 years old and has completely outlived its life and its utility period is also to be ignored. The question for consideration is from development of numerous cracks and the falling down of the other part and from this and the other evidence before me, whether the premises in question has become of the nature which can qualify the terminology of unfit and unsafe for human habitation. This witness (AW1) in examination-in-chief gave evidence regarding the whole property including the premises in question. In room No. 4 of the premises in question, there is newly provided support as per the report of this witness. The roof of room No. 5 is also mentioned as depressed and sagged. There is mention of cracks in the walls. So far as the expert of the petitioner namely Pritam Singh Dhaliwal is concerned, his deposition is recorded as RW6. He has stated that property in question is not unfit and unsafe for human habitation and there are no cracks, no bulging' out and all walls are in plumb and are in very strong condition. In the cross-examination he has been asked about the photographs and he has stated that he cannot say as to the photographs Ex.A4, A4, A5, and A6 are of room No. 1, roof in which supports have been given to the roof structure. He has stated that it is incorrect that he has not deliberately got snapped photographs Ex. RW6/F avoiding the props and rafters. It, therefore, appears that this witness is deliberately avoiding the condition of the building as could be found from the photographs produced by the respondents. This being the position, I find that

much importance cannot be given to the expert examined by the petitioner. The Local commissioner examined by him is not a technical man so far as the interpretation of the relevant provision of the Rent Act is concerned. From the whole evidence, I find that the respondent-landlord has proved his case.

18. In view of the above, this revision petition has no merit and is hereby dismissed.

19. In order to avoid any difficulty it will be proper to grant some time to the petitioner to vacate the premises. The eviction order against the petitioner shall not be executed for a period of three months from today, if the petitioner, within 15 days from today, pays up all the arrears of rent, if due, either to the respondent or deposit the same in the court.

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