

Tarsem Lal Vs. Krishan Chander

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Court : Punjab and Haryana

Decided On : Sep-15-2004

Reported in : (2005)139PLR870

Judge : Ashutosh Mohunta, J.

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

Appeal No. : Civil Revision No. 2640 of 1985

Appellant : Tarsem Lal

Respondent : Krishan Chander

Advocate for Def. : None

Advocate for Pet/Ap. : Hemant Sarin, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Ashutosh Mohunta, J.

1. Tarsem Lal tenant has filed this revision petition to assail the judgment and decree dated 31.7.1985 passed by the Appellate Authority, Jullundur, vide which the ejectment petition on the ground of the building being unsafe and unfit for

human habitation, filed by the landlord has been allowed and the tenant has been ordered to be evicted from the demised premises.

2. The respondent-landlord sought ejectment of the petitioner-tenant Under Section 13(3)(iii) of the [East Punjab Urban Rent Restriction Act, 1949](#) (for short 'the Act') on the ground that the demised premises had become unsafe and unfit for human habitation. The parties led evidence in support of their case. On the pleadings of the parties, the Rent Controller, Nakodar, framed the following issues:-

1. Whether the respondent is liable to be ejected on the grounds taken up by the petitioner in para No. 4 of the petition? OPA.

2. Whether the petition has not been filed in good faith as alleged in preliminary object No. 1 of the written statement? OPD.

3. Both the issues were decided in favour of the petitioner and against the respondent. Accordingly, the Rent Application filed by the landlord-respondent for ejectment of the tenant was dismissed vide judgment and decree dated 5.4.1984. On appeal, the Appellate Authority, Jullundur, allowed the appeal and ordered the ejectment of the petitioner-tenant from the demised premises vide judgment and decree dated 31.7.1985. Now the tenant has filed the present revision petition to challenge the judgment and decree dated 31.7.1987 passed by the Appellate Authority ordering his ejectment.

4. No one has put in appearance on behalf of the respondent despite service of the actual date notice on him twice. Consequently, the petition is being decided after hearing the counsel for the petitioner and on perusal of the record.

5. Undisputed facts of the case are that the respondent purchased the building in dispute from the previous owner on 6.4.1981. He let out the same to the petitioner at a monthly rental of Rs. 500/- on 2.5.1981. The present ejectment application was filed by the landlord 24.9.1983. The documentary evidence conclusively proves that when the demised premises were rented out to the petitioner, the hind room had already fallen and the portion of the premises, which was rented out to

the petitioner was intact. The Appellate Authority ordered the ejectment of the petitioner on the ground that the condition of the premises as a whole is to be taken into consideration for ordering ejectment of the tenant on the ground of the premises being in dilapidated condition. This approach of the Appellate Authority is against the facts appearing on record. In the present case, the hind portion of the demised shop in occupation of the petitioner had already fallen down at the time when the shop in dispute was rented out to him. It is not the case of the landlord that after the shop was rented out to the petitioner, the hind portion thereof had fallen down. Moreover, the premises in dispute were rented out to the petitioner on 2.5.1981 and the ejectment application has been filed by the landlord on 24.9.1983, i.e., after about 2 years and 4 months, on the ground that the premises have become unsafe and unfit for human habitation. While appearing as A.W.I, the landlord admitted in cross-examination that the 'building in dispute is in the same condition as it was previously.' When the building is in the same condition as it was at the time of its lease, then there was no question of ordering ejectment of the tenant on the ground of its being unsafe and unfit for human habitation. Even in the sale-deed (Ex. P3) it is explicitly mentioned that the portion purchased by Darshan Kumar had been demolished at the time of its sale to him. It is this portion of the premises, on the basis of which the landlord has sought the ejectment of petitioner on the ground of its having become unsafe and unfit for human habitation. In the case reported as Mohinder Pal v. Hari Das, (2000-3)126 P.L.R. 563. It has been held by this Court that if the other part of the building has fallen down, that by itself would not mean that the premises in question are also unfit and unsafe for human habitation.

Consequently, I allow the revision petition and set aside the judgment and decree dated 31.7.1985 and uphold the judgment and decree dated 5.4.1984 passed by the Rent Controller, Nakodar.