

Lakh Ram Vs. Babu Ram

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Court : Himachal Pradesh

Decided On : Sep-11-1989

Reported in : AIR1991HP32

Judge : Bhawani Singh, J.

Acts : Himachal Pradesh Urban Rent Control Act, 1971 - Section 14 and 14B

Appeal No. : C.R.P. No. 86 of 1989

Appellant : Lakh Ram

Respondent : Babu Ram

Advocate for Def. : Devinder Gupta, Adv.

Advocate for Pet/Ap. : G.D. Verma, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Bhawani Singh, J.

1. By this revision petition, the tenant has challenged the judgment of Appellate Authority (I), Shimla, in C.M.A. No. 125-S/14 of 1988 decided on 28-3-1989 thereby affirming the order of the Rent Controller dated 12-8-1988 in Case No.

70/2 of 1986.

2. The facts, in brief, are that the tenant occupies premises consisting of two rooms and one store of the building known as 'Pen Rose Lodge, Kasumpti, a suburb of Shimla. The landlord moved this petition under Section 14 of the Himachal Pradesh Urban Rent Control Act, 1971 on grounds, inter alia, that the tenant had failed to pay the rent from 1-8-1982 to 30-9-1986 despite repeated demands and notices and that the building was very old and had outlived its life and was in a dilapidated condition and thus had become unsafe and unfit for human habitation. It is just like a village house without any modern facilities and the petitioner had purchased the building with a purpose to demolish the same and reconstruct a building of modern style after providing all modern facilities and the same cannot be done without the tenant vacating the same. It has also been stated that the plan for the new building has already been sanctioned by the Municipal Corporation and other authorities and the estimated cost was to be raised and the landlord had the funds to spend for the purpose. A ground that the premises had been sub-let without the consent of the landlord after the commencement of the Act has also been taken. On the other hand the tenant has opposed the petition on the grounds like non-maintainability, locus-standi of the petitioner to file the same, want of cause of action and that the buildings in good condition and did not require any demolition. It has also been denied that the same has been sub-let to anyone.

3. The Rent Controller framed the following issues on the pleadings of the parties :

' 1. Whether the respondent is in arrears of rent, if so, to what extent? OPP.

2. Whether the premises in question have become unfit and unsafe for human habitation? OPP.

3. Whether the respondent has without the consent of the petitioner subletted the premises in question after the commencement of the H.P. Urban Rent Control Act, 1971? OPP

4. Whether the petition is not maintainable? OPR.

5. Whether the petitioner is estopped to file the present petition due to his own acts, conduct and deeds? OPR.

6. Whether the petitioner has no locus standi to file the present suit? OPR.

7. Relief.'

4. After the trial, the Rent Controller held that the tenant was in arrears of rent; that the premises had become unfit and unsafe for human habitation; that the petition was maintainable and the landlord was not estopped to file the present petition due to any act of his own and he had every locus standi to file the same. It was held in favour of the tenant that the premises had not been sub-let by him, as alleged by the landlord. Finally, the petition was allowed and the tenant was directed to hand over the vacant possession of the premises in question to the petitioner within 60 days from the date of the order.

5. The matter was brought in appeal before the Appellate Authority (I), Shimla, where the parties confined their submissions to the findings of the Rent Controller as to issues Nos. 2, 4 and 5 and it was prayed that the findings on these issues were wrong and needed to be set aside. After examination of the judgment of the Rent Controller relating to these points quite exhaustively, the Appellate Authority disagreed with the challenge of the tenant on these issues and rejected the claim of the tenant. This is how the matter has come in this Court.

6. Again, Shri G. D. Verma, who appears for the tenant, has reiterated the same challenge and contended that the judgment under appeal deserves to be set aside. It was also contended that under the provisions of the Rent Act, there is no ground available to the landlord that dilapidated building was purchased by the landlord with intention to reconstruct the same since such a conduct on the part of the landlord negatives the plea of bona fide requirement on his part to reconstruct the same and the landlord had, in this case, very well seen the nature of the building he had purchased and it is also contended that the landlord has not stated specifically that he would also vacate the same for the purpose of reconstruction. I am not convinced by any of the submissions made by Shri G. D. Verma for the reasons that the latter part of his submissions did not form part of the pleadings in

the statement of defence nor there is any evidence or arguments thereon at any stage of the case before the Rent Controller and the Appellate Authority. However, these submissions are not matters of law nor are they necessarily to be taken into consideration while deciding a matter like this. The grounds for eviction under item No. 18(2) of the eviction petition have been distinctively mentioned. In case the landlord has mentioned anything over and above that, the same is only the reflection of the nature of the building and his intention to reconstruct the same on modern lines. There is no prohibition against a person who purchases a dilapidated building for the purpose of reconstruction with modern facilities. Such a conduct, on the part of the landlord, is obvious since the existing building does not cater to his requirements nor the same could be used due to the same being old, dilapidated and unfit and unsafe for human habitation. If such is the situation, obviously, the landlord would naturally have recourse to legal provisions enabling him to seek eviction of the tenant in those premises on the available grounds and reconstruct the building. What is to be seen is whether the case and the circumstances are such which can satisfy the judicial conscience within the parameters of legal provisions that the intended action of the landlord seeking reconstruction by the vacation of the premises from the tenant is genuine and bona fide.

7. In order to see the genuine and bona fide claim of the landlord, the court has to see number of factors. Shri Devinder Gupta, learned counsel for the landlord, submits that the authorities below have come to concurrent findings on this aspect of the matter and, therefore, even if it is admitted that the revisional jurisdiction of this Court under the Act is wider than the one under Section 115 of the Code of Civil Procedure, as said in 1977(1) RLR 168 (J. P. Chetrath v. Shamboo Dayal) in that event also, in the light of the decisions like (1988) 2 SCC 172 : (AIR 1988 SC 852) (Hiralal Kapur v. Prabhu Choudhury), (1987) 3 SCC 538 : (AIR 1987 SC 1782) (Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri), (1987) 2 SCC 219 : (AIR 1987 SC 1150) (Sushila Devi v. Avinash Chandra Jain), AIR 1968 Delhi 299 (Sant Ram v. Mekhu Lal and Co.), (1987) 3 RLR 665 (Gurditta Mall v. Gita Devi), 1988(2) RLR 785 (M. Gopala Karup v. S. A. Abdul Rahim), AIR 1974 SC 1059 (Phiroze Bamanji Desai v. Chandrakant M. Patel), AIR 1963 SC 698 (Hari Shankar v. Rao Girdhari Lal Chowdhury), AIR 1964 SC 461 (Pooran Chand v.

Motilal), AIR 1980 SC 1253 (Sri Raja Lakshmi Dyeing Works v. Ranga-swamy Chettiar), Civil Revision No. 36 of 1983 (Smt. Dakhnu v. Hem Raj), decided on 11-7-1989 and Civil Revision No. 79 of 1989 (Som Nath Sharma v. Prem Lata), decided on August 16, 1989, the concurrent findings may neither be reappreciated to the disadvantage of the landlord nor set aside since there is neither miscarriage of justice nor mistake of law nor there is any taint of unreasonableness in arriving at the same on the basis of the evidence on the record of this case. Keeping in view the parameters of the jurisdiction of this Court and the interest of justice, I examine the findings of the authorities below to know whether the claim of the landlord is genuine and bona fide thus coming within the ambit of the principles laid down by the apex court in number of cases like AIR 1971 SC 942 (Panchmal Narayana Shenoy v. Basthi Venkatesha Shenoy), 1979 (2) RLR 161 : (AIR 1979 SC 1559) (Metalware & Co. v. Bansilal Sharma) and Civil Revision No. 36 of 1983 (Smt. Dakhnu v. Hem Raj), decided on 11-7-1989. There is sufficient evidence pointing out that the building is in a dilapidated condition and is unfit for human habitation. Shri S. P. Kapur (P.W. 6), an expert, has given a report (Ex. P. W. 6/A) besides his statement in the Court. It is relevant to extract the important part of his report under captions 'condition of the building' and 'conclusions' as under :

'Condition of the Building :

All the walls are cracked and tilting. Tilts noticed in those walls which are likely to collapse have been shown in the attached plan together with their size and location. Cracks in first floor walls are 1/4' to 4' in width. Tilt in walls is from 6' to 9' in one storey i.e. in a height of 8'-6'. Roof sheets are all rotten full of holes and leakage marks were noticed both on walls and on hessian cloth ceiling. Walls of South Western portion of ground floor has already collapsed. Wooden rafters purlins bonds and planks used in the roof and in dhajji walls are mostly decayed and building has already outlived its economic life. The owner supplied a copy of sanction plan. On this plan, portion already constructed and portion he proposes to construct immediately have been marked in green and red respectively.

xxxxxxxxxxxxConclusions :

(i) The house is very old, in a dangerously, dilapidated condition and not fit for human habitation.

(ii) Shri Babu Ram Tanwar has already spent, a sum of Rs. 47,460 on the construction of Northern portion of building. Remaining portions which are essentially required for his living are to be constructed at a cost of Rs. 78,040/-. This work cannot be done till the rented portion is vacated and dismantalled.'

8. There are exhibits like Ex. P.W. 5/7 to Ex. P. W.5/12, photographs, pointing out the dilapidated condition of the building. The tenant has filed his own technical report Ex. P.W.2/8 dated 1-8-1987 and the perusal of the same also does not speak very well of the nature of the building. As a matter of fact, this report also points out that some portions of the building are not in good shape and water leaks from the upper flat to the lower flat. There are holes and dampness in the walls.

9. Coming to the bona fides of the landlord, there is the evidence in the form of notice by the Commissioner, Municipal Corporation, dated 31-3-1987 (Ex. P.W.4/C) under Sections 272(2) and 273 of the Himachal Pradesh Municipal Corporation Act, 1979 calling upon the landlord to remove/demolish/ repair the building.

10. Towards the reconstruction of the premises, there is the order of sanction of the new building by the Municipal Corporation (Ex, P.W. 4/A), sanction (Ex. P. 1) by the Town and Country Planning Organisation and order of sanction of loan for the Construction of the building (Ex. PX) dated 28-3-1988 to the extent of Rs. 94,000/-.

11. The examination of the case, therefore, establishes beyond any shadow of doubt that the authorities below have considered the matter exhaustively before arriving at the findings. Their opinions are concurrent and are based on the evidence on the record of this case. My examination of the matter has the same result.

12. The landlord has thus clearly established his claim for eviction of the tenant and there is no merit in the revision petition and the same is accordingly

dismissed. The tenant is, however, given one month's time to handover the vacant possession of the premises to the landlord. The parties are, however, left to bear their own costs.

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