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Court : Himachal Pradesh

Decided On : Jul-07-1993

Reported in : AIR1994HP81

Judge : Kamlesh Sharma, J.

Acts : Himachal Pradesh Urban Rent Control Act, 1987 - Section 14(3)(3); ;Code of Civil Procedure (CPC) , 1908 - Section 115

Appeal No. : Civil Revn. Petn. No. 214 of 1991

Appellant : Amro Devi

Respondent : Ajay Kumar Sood

Advocate for Def. : A.K. Goel, Adv.

Advocate for Pet/Ap. : K.D. Sood, Adv.

Disposition : Revision allowed

Judgement :
ORDER

Kamlesh Sharma, J.

1. Petitioner Amro Devi is the tenant of Houses Nos. 297 and 624 situated in the building known as 'Khushi Lal Building', Cantonment Road, Kotwali Bazar,

Dharamshala (hereinafter called the premises in dispute) owned by respondent-landlord Ajay Kumar Sood. Against her an eviction order was passed by the Rent Controller, Kangra at Dharamshala vide its judgment dated 30th March, 1990 on the ground that the premises in dispute are bona fide required by Ajay Kumar Sood 'for re-building/ re-construction in view of the notices of the Municipal Committee under Sections 110 and 111 of the H.P. Municipal Act, which are Exts. PB and PC'. The judgment of the Rent Controller was affirmed by the Additional District Judge (1) (Appellate Authority (2) under the Himachal Pradesh Urban Rent Control Act), Kangra at Dharamshala vide his judgment dated 13th September, 1991 in an appeal filed by Amro Devi. Hence, she has filed the present revision petition.

2. The grounds on which the eviction of Amro Devi was sought, as stated in column 18(a) of the eviction petition, are :--

'The building (Khushi Lal Buildings) of which the disputed premises is a part has developed major cracks and there are several buldges from top to bottom. The wood used in the building has outlived its life. The building is in dangerous condition. The building is not safe to occupy and has become unfit for human habitation. The Municipal Committee Dharamshala has issued two notices dated 10th July, 1984 and 5th April, 1986 under Sections 110, 111 of H.P. Municipal Act, to the petitioner in this regard. The earthquake of April, 1986 has further caused deterioration in the building. The petitioner bona fide requires the same for rebuilding. The petitioner has got the map sanctioned for reconstruction from the Municipal Committee, Dharamshala and necessary estimates prepared.'

3. In her reply she traversed the allegations made in column 18(a) of the eviction petition. According to her, the condition of the building was quite good and it only required minor repairs which could be done . without vacation. It was specifically denied that the premises in dispute were unfit for human habitation as alleged. The notices of Municipal Committee mentioned by Ajay Kumar Sood in his eviction petition were got issued by him in collusion with certain Officers of the Municipal Committee to create aground for ejectment. She has further alleged that Ajay Kumar Sood does not bona fide require the premises in dispute for rebuilding. In

fact, he intends to re-let the premises in dispute on exorbitant rent as the rent paid by her having fixed 25 years ago is low as compared to present day rents.

4. On the pleadings of the parties, the following issues were framed :--

1. Whether building in question is not safe to occupy and has become unfit for human habitation? OPP.

2. Whether Municipal Committee Dharamshala has issued two notices dated 10-7-1984 and 5-4-1986 under Sections 110 and 111 of H.P. Municipal Committee Act to the petitioner as alleged? If so its effect? OPP.

3. Whether the earthquake dated April, 1986 has further caused deterioration of the building in dispute? If so, its effect? OPP.

4. Whether the petitioner requires the premises in dispute bona fide for rebuilding/ reconstruction, as alleged? OPP.

5. Relief.

5. The Rent Controller answered Issues 1 and 3 in the negative against Ajay Kumar Sood holding that he has failed to prove that the premises in dispute have become unsafe and unfit for human habitation and that earthquake of April, 1986 has further caused deterioration in them, as no expert witness has been produced to prove these facts. Issues Nos. 2 and 4 have been answered in positive in favour of Ajay Kumar Sood holding that he does 'bona fide require the premises in dispute for the purpose of reconstruction in view of the notices of Municipal Committee under Sections 110 and 111 of the Himachal Pradesh Municipal Act Exts. PB and PC'. Taking note of undertaking given before him by Ajay Kumar Sood that he will make an offer to Amro Devi to occupy a portion of the building after its reconstruction on the market rent, the Rent Controller has given direction that such an offer be given in writing and if no reply is received within a period of one month, Ajay Kumar Sood may give the building to other tenant on more rent than the one on which offer will be made to Amro Devi.

6. The Appellate Authority has though affirmed the judgment of the Rent Controller, but in his discussion he has mixed up the grounds on which the eviction order was sought for and ultimately allowed by the Rent Controller. From the allegations made in column 18(a) of the eviction petition, only two grounds were made out. Firstly, that the premises in dispute have become unsafe and unfit for human habitation and secondly, that these are bona fide required for rebuilding. In support of these it is mentioned that Municipal Committee, Dharamshala has also issued two notices dated 10th July, 1984 and 5th April, 1986 under Sections 110 and 111 of the Himachal Pradesh Municipal Act. This is also clear from the issues framed by the Rent Controller,

7. The relevant provisions of Himachal Pradesh Urban Rent Control Act, 1987 are in Section 14(3)(c) which provide that eviction of a building or rented land can be sought on the following grounds:--

1. If it is required 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.

2. If it has become unsafe or unfit for human habitation.

3. If it is required bona fide for carrying out repairs which cannot be carried out without the building or rented land being vacated.

4. If it is required bona fide for the purpose of building or rebuilding or making thereto any substantial additions or alterations and that such building or rebuilding or addition or alteration cannot be carried out without the building or rented land being vacated.

Out of these four grounds, the eviction petition in the present case was filed on 2nd and 4th grounds. The notices of the Municipal Committee were only referred to in support of these two grounds as these were not issued under1 some improvement or development scheme as envisaged in these provisions.

8. After hearing learned counsel for the parties and examining the record, this Court is of the opinion that this revision petition deserves to be allowed on the

short ground that respondent-landlord Ajay Kumar Sood has failed to plead and prove the statutory requirement that rebuilding of the premises in dispute cannot be carried out without these premises being vacated. Neither in column 18(a) of the eviction petition, which is reproduced hereinabove, nor in the statement of any of the witnesses adduced by Ajay Kumar Sood it is deposed that premises in dispute cannot be rebuilt unless vacated. No expert witness was produced to prove this fact. Without pleading and proving that rebuilding cannot be carried out without vacation of the premises in dispute, eviction order could not be passed on the ground that premises in dispute are bona fide required by the landlord for rebuilding. Both the authorities below have not directed themselves to this aspect of the matter. It cannot be disputed that for passing eviction order on the ground of rebuilding it is mandatory for the authorities to satisfy themselves that without vacation of the premises in dispute the rebuilding is not possible, which has not been done in the present case. Therefore, the eviction petition must fait.

9. Mr. A. K. Goel, appearing for Ajay Kumar Sood respondent-landlord, relying upon the judgments in Smt. Krishnawati v. Hans Raj, 1974 Ren CR 163 : (AIR 1974 SC 280) and K.A. Anthappai v. C. Ahammed, (1992)3 SCC 277 : (AIR 1992 SC 1696), has urged that in exercise of its revisional jurisdiction this Court should not interfere with the concurrent findings of fact of both the authorities below that Ajay Kumar Sood respondent-landlord bona fide requires the premises for rebuilding. This argument has been raised to be rejected in the facts and circumstances of this case and the legal position discussed hereinbefore. Rather this Court, white exercising its revisional jurisdiction, is duty bound to set aside the eviction order based on such concurrent findings of fact as are vitiated due to non-compliance of mandatory provisions of law.

10. The result of above discussion is that the revision petition is allowed and the judgments of the Appellate Authority (2), Kangra at Dharamshala dated 13-9-1991 and the Rent Controller, Kangra at Dharamshala dated 30-3-1990 are set aside, and the eviction petition of Ajay Kumar Sood respondent-landlord is dismissed. No costs.

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