

Jamil Ahmad Vs. Dewan Chand

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Court : Himachal Pradesh

Decided On : Sep-11-1989

Reported in : AIR1991HP50

Judge : Bhawani Singh, J.

Acts : Himachal Pradesh Urban Rent Control Act, 1971 - Section 14(3)

Appeal No. : Civil Revision No. 123 of 1983

Appellant : Jamil Ahmad

Respondent : Dewan Chand

Advocate for Def. : Chhabil Das, Adv.

Advocate for Pet/Ap. : Kapil Dev Sood, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Bhawani Singh, J.

1. Petitioner Jamit Ahmad has a grievance against the judgment of the appellate authority under the Rent Control Act (District Judge), Nahan, in appeal No. 12N/ 14 of 1982, decided on April 28, 1983, thereby affirming the order of eviction

passed by the Rent Controller, District Sirmur, at Nahan, in Rent Suit No. 2/2 of 1979, decided on July 1, 1982.

2. The facts, in brief, are that the tenant (hereinafter referred to as 'the petitioner') is occupying the shop on the ground floor of the building bearing Municipal No. 1759/9, situate in Ward No. 9, Mohalla Ganughat, Nahan. It is a double storeyed building and the respondent (hereinafter called as 'the landlord') purchased it through a registered sale deed dated October 5, 1978 and is occupying the first floor thereof.

3. A petition, seeking eviction of the petitioner was moved on the grounds inter alia that he was in arrears of rent; that the building has become unsafe and unfit for human habitation; the same is bona fide required for reconstruction being in dilapidated condition and substantial additions and alterations were not possible without the building being vacated. It has also been averred that initially the petitioner was carrying on the business of Barbar followed by Karyana business and finally became a contractor in the Public Works Department.

The shop remained closed for four years and it became dilapidated and now the same has been rendered unsafe and unfit for human habitation, on the other hand, the petitioner denies these allegations and asserts that he continued his initial business with the help of his son and servant although he became a P.W.D. contractor. As to the condition of the building, it is contended that the shop is neither dilapidated nor unsafe and unfit for human habitation. According to him, the premises became unsafe and unfit for human habitation due to the action of the landlord himself. The damage to the roof of the shop, cracks in the walls and the floor and the openings were all due to the action of the landlord and finally it is stated that the upper portion of the premises could be rebuilt without the shop being vacated.

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

1. What is the rate of monthly rent of the shop in dispute? O.P. Parties

2. Whether respondent is liable to be evicted from the premises in dispute on the grounds enumerated under para 18(a)(1 to 4) of the petition)? O.P.P.
3. Whether the petition is mala fide? If so, its effect. O.P.R.
4. Relief.
5. On the facts and evidence on record, the submissions of the landlord prevailed with the Rent Controller and eviction order was passed. The petitioner assailed this order before the appellate authority unsuccessfully with the result that the order of the Rent Controller was upheld and the finding were affirmed. This is how the matter has come up before this Court.
6. Before looking into the matter, it is relevant to quote the provisions of Section 14 of the Act as the sole question for decision in this petition is as to whether the claim of the landlord for rebuilding is bona fide or not within the parameters of this provision :--

'14. Eviction of tenants :-- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section.

(2)

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(i) and (ii)

(iii) In the case of any building or rented land, if he 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 or is required bona fide by him for carrying out repairs which cannot be carried out without the building or rented land being vacated or that the building or rented land are required bona fide by him 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.

(iv)

(b) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application :

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in aggregate. (c)

(4) Where a landlord who has obtained possession of building or rented land in pursuance of an order under Sub-section (3) doesnot himself occupy it or, if possession was obtained by him for his family in pursuance of an order or where a landlord who has obtained possession of a building under Sub-clause (iii) of the aforesaid Clause (a) put that building to any use lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.

(5)

7. A persual of these provisions indicates that the condition precedent for the eviction of a tenant is the bona fide claim of the landlord. Finding this aspect is most crucial to the legality of any order passed under these provisions. It is further noticeable that the legislative emphasis is also to see that the landlord does not make use of these provisions in his favour simply for the eviction of an offending tenant and lets out the premises to some tenant other than the one against whom an order of eviction is sought. In that event, the aggrieved tenant can apply to the Controller and the Controller can pass an order directing the landlord to restore the possession of the premises to such a tenant. The intention behind the Act is to

safeguard the interests of the tenant. Therefore, the requirement of bona fide claim of the landlord has to be satisfactorily established before a claim for rebuilding of the premises can be allowed.

8. Under Section 14(3)(a)(iii) of the Act, a petition for eviction of a tenant can lie on the following grounds :--

(a) (i) If he 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;

(b) If the building has become unsafe or unfit for human habitation;

(c) If the building is required bona fide by the landlord for carrying out repairs which cannot be carried out without the building being vacated;

(d) If the building is required bona fide by the landlord 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 being vacated.

9. The claim of the landlord, in the present case, pertains to category (d) of the aforesaid grounds. From Section 14(3)(a)(iii) and 14(3)(d) it is plain that the claim of the landlord for the purpose of building or rebuilding should be bona fide and genuine. In order to decide this requirement, various factors and surrounding circumstances have to be considered.

10. In the present case, an attempt has been made by the petitioner to assail the findings on this aspect of the matter and in this connection it has been alleged that the lower portion of the premises does not require any rebuilding or alteration or modification nor the same are in any way unsafe or unfit for human habitation because of the dilapidated condition of the upper storey. It is also contended that the upper portion in the occupation of the landlord can be reconstructed without dismantling the portion in his occupation but the petitioner has failed to prove the same satisfactorily. The landlord has proved the same by the production of satisfactory evidence pointing out that the upper portion of the building is

thoroughly dilapidated. It has developed cracks and holes. It has also been proved that the same cannot be reconstructed without vacating the premises in dispute. It has also been pointed out that there is No. W.C. Bath Room, Kitchen, Store and Ladder to go to this portion of the building. Obviously, the new construction, intended to be done, will make provisions for these essential requirements. Shri K.N. Bhaskar (P.W. 2), a retired Municipal Engineer, who has prepared the site plan (Ex. P. 1), has proved the condition of the premises elaborately and there is no reason to disbelieve the versions of the witnesses of the landlord who has been supported even by his ex-tenant Shri Krishnu Ram Gautam (P.W. 3).

11. Shri K. D. Sood, learned counsel for the petitioner, submits that the two portions of the building are distinct. The upper portion may require reconstruction but the shop portion of the same did not require the same since it is in good condition. In such a situation, he contends that the petitioner cannot be called upon to vacate the same and the reconstruction can be carried out without dismantling this part of the premises; Reliance has been placed on a decision of this Court reported in AIR 1981 HP68 (Surrinder Nath v. P. N. Dhawan). In view of the evidence on record, i am not convinced with the submissions of Shri K. D. Sood. Evidence discloses that the upper portion of the premises is in dilapidated condition but so far as the roofing of the shop in occupation of the petitioner is concerned the same has also developed cracks and the outer parts of the beams holding the same have also decayed. The shop is also not in good condition and in order to revitalise the premises by reconstruction, obviously the tenanted premises have got to be vacated to enable the landlord to construct a good building which right cannot be denied. The facts in Surrinder Nath's case (supra) were quite different. Moreover, the learned Chief Justice was primarily influenced by the profit motive of the landlord and in addition there was evidence pointing out clearly that the portion in the occupation of the tenant was intact; the premises on the sides had collapsed.

12. Shri Chhabil Das who appears for the landlord, contends that the Rent Controller and the Appellate Authority have gone into the matter quite elaborately. They have discussed each and every material aspect of the case before coming to concurrent findings on all relevant and important matters involved in this case.

Therefore, in view of the occurrent findings on facts, Shri Chhabil Das urges, no inference at the revional stage is called for even if it is conceded that the jurisdiction of this Court under the Rent Act is wider than under the provisions of Section 115 of the Civil P.C. Shri Chhabil Das seeks assistance from (1988) 2 SCC 172 : (AIR 1988 SC 852) (Hira Lal Kapur v. Prabhu Choudhury); (1987) 3 SCC 538 : AIR 1987 SC1782) (Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri); (1982) 2 SCC 219 (Sushila Devi v. Avinash Chandra Jain) and AIR 1968 Del 299 (Sant Ram v. Mekhu Lal & Co.) and submits that reappraisal of evidence relating to concurrent findings of facts is not permissible.

13. Keeping these observations in mind, I examine the bona fide claim of the landlord and before doing so reference to judicial precedents relevant in this case, is necessary.

14. In AIR 1971 SC 942 (Panchmal Narayana Shenoy v. Basthi Venkatesha Shenoy), Basthi Vehkatesha Shenoy (landlord) filed an application for eviction under the Mysore Rent Control Act, 1961 on the ground that the premises were reasonably and bond fide required by him for the immediate purpose of demolishing and re-eracting of a new building. It was alleged that the premises were old and were not suitable for continued occupation. This eviction application was contested by M/s. Panchmal Narayana Shenoy (tenant). The Rent Controller ordered eviction of the tenant after holding that the building was more than fifty years old and was old fashioned. The claim of the landlord was bona fide and reasonable and he had sufficient means to construct the new building. On appeal, the District Judge also confirmed the finding of the Rent Controller and Revision Petition filed in the High Court was also rejected. On appeal by the tenant in the Supreme Court, the learned Judges of the Supreme Court observed as follows in paras 11 to 13 of the judgment (at page SC 944; AIR 1971) :--

'11. The proviso to Section 21(1) enumerates the various circumstances under which a landlord may seek to recover possession of the property from his tenant. The requirement contemplated under Clause (j) of the proviso to Sub-section (1) is that of the landlord and it does not have any reference to the condition of the building as such. What is necessary under that clause is that the landlord must

satisfy the Court that he reasonably and bona fide requires the premises for the immediate purpose of demolishing it and the demolition is for the purpose of erecting a new building in the place of the old one. No doubt, as to whether the landlord's requirement is reasonable and bona fide has to be judged by the surrounding circumstances, which will include his means for reconstruction of the building, and other steps taken by him in that regard.

12. In considering the reasonable and bona fide requirement of the landlord under this clause, the desire of the landlord to put the property to a more profitable use after demolition and reconstruction is also a factor that may be taken into account in favour of the landlord. In our opinion, it is not necessary that the landlord should go further and establish under this clause that the condition of the building is such that it requires immediate demolition. That the condition of the property may be such which requires immediate demolition is emphasised in Clause (k) of the proviso. When such a specific provision has been made in Clause (k), the condition of the building cannot come into picture nor could it have been dealt with again in Clause (j). So the requirement under Clause (j) is that the landlord cannot have any reference to the building.

13. This Court, in *Neta Ram v. Jiwan Lal*, (1962) Supp 2 SCR 623 : (AIR 1963 SC 498) in interpreting no doubt a slightly differently worded provision in Section 13(3)(a)(iii) of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, 2006 BK (8 of 2006 BK) held that one of the circumstances which could be taken into account in considering the requirements of the landlord with reference to the existing building is the possibility of its being put to a more profitable use after construction. In the case before us all the Courts have concurrently held that the requirement of the landlord is reasonable and bona fide and that he had obtained the necessary sanction from the municipality concerned and that the landlord had also the means for reconstruction of the building. If the landlord does not commence demolition of the premises within the period specified in the order of the Court, the tenant is given a right under Section 26(1) to issue a notice to the landlord of his intention to occupy the premises from which he had been evicted and also to apply to the Court for relief if the landlord does not comply with his request. Again, under Section 27, the tenant has got a right to occupy the

new building on its completion provided that he satisfies the requirements contained in that section. Under Section 28(1) the landlord is bound to intimate the tenant from whom he had received a notice under Section 27 the date on which the erection of the new building will be completed from which date the tenant will be entitled to occupy the same.'

15. In 1979 (2) RLR 161 (Metalwares & Co. v. Bansilal Sharma), were tenants of the premises which were purchased by Bansilal Sharma (landlord) in the year 1975. Applications for eviction of the tenants were filed by the landlord on the ground that the building was old and dilapidated which required immediate demolition and reconstruction, and they bona fide required it for the said purpose of their occupation. It was alleged that the landlords were possessed of sufficient means to undertake the demolition and reconstruction and had applied for the sanctioning of the plan. The Rent Controller allowed the application after holding that the landlord had sufficient means to undertake the demolition and reconstruction and had got their plans approved by the Municipal Corporation. It was held that the landlords had an honest intention to demolish the existing structure and to reconstruct another on that site. No definite finding was given on the question as to whether the building was in dilapidated condition and required immediate demolition and reconstruction and the Rent Controller took the view that it was not always essential to prove that the building was decrepit before an application for possession could be made under Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, (18 of 1960) (as amended by Act 23 of 1973), and that the landlord had a right to demolish his property in order to build a new structure on the site with a view to improve his business or get better returns out of the investments and that the landlords had purchased the building for reconstruction after the demolition. The Appellate Authority dismissed the appeal and affirmed the findings of the Rent Controller. A revision was filed in the High Court which was also dismissed. The tenant filed an appeal in the Supreme Court and the Supreme Court observed in para 6 of the judgment as follows :--

'It cannot be disputed that the phrase used in Section 14(1)(b) of the Act is 'the building is bona fide required by the landlord' for the immediate purpose of demolition and construction and the same clearly refers to the bona fide

requirement of the landlord, it is also true that the requirement in terms is not that the building should need immediate demolition and reconstruction. But we fail to appreciate how the state or condition of the building and the extent to which it could stand without immediate demolition and reconstruction in future would be totally irrelevant factor while determining 'the bona fide requirement of the landlord'. If the Rent Controller had to be satisfied about the bona fide requirement of the landlord which must mean genuineness of his claim in that behalf the Rent Controller will have to take into account all the surrounding circumstances including not merely the factors of the landlord being possessed of sufficient means or funds to undertake the project and steps taken by him in that regard but also the existing condition of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction. All these factors being relevant must enter the verdict of the Rent Controller on the question of the bona fide requirement of the landlord under Section 14(1)(b). In a sense if the building happens to be decrepit or dilapidated it will readily make for the bona fide requirement of the landlord, though that by itself in the absence of any means being possessed by the landlord would not be sufficient. Conversely, a landlord being possessed of sufficient means to undertake the project of demolition and reconstruction by itself may not be sufficient to establish his bona fide requirement if the building happens to be a very recent construction in a perfectly sound being put to a more profitable use after reconstruction. In any case these latter factors may cast a serious doubt on the landlords' bona fide requirement. It is, therefore, clear to us that the age and condition of the building would certainly be a relevant factor which will have to be taken into account while pronouncing upon the bona fide requirement of the landlord under Section 14(1)(b) of the Act and the same cannot be ignored.'

In para 7, it is again observed :--

'We are clearly of the view that the age and existing condition of the building whether it is a recent construction or very old and whether it is in a good and sound condition or has become decrepit or dilapidated are relevant factors forming part of 'all the circumstances' that have to be considered while determining the bona fide requirement of the landlord under Section 14(1)(b) of the Act and in the

totality of the circumstances these factors may assume lesser or greater significance depending upon whether in the scheme of the concerned enactment there is or there is not a provision for reinduction of the evicted tenant into the new construction. Such a view would be in accord with the main objective of the benign legislation enacted with the avowed intention of giving protection to the tenant.'

16. The learned Judges also referred to some cases including Neta Ram's case (1963 SC 499) and M/s. Panchmai Narayana Shenoy's case (1971 SC 942) in this judgment.

17. Despite the submission of Shri Chhabil Das, I have examined all the material aspects of this case in the light of the evidence on record as well as the findings arrived at by the Rent Controller and the Appellate Authority. I am of the considered opinion that the claim of the landlord is quite genuine and bona fide. The premises are quite old and not in good condition and require reconstruction as prayed. Looking to the bona fide claim of the landlord, there is evidence of funds to be spent on the premises, map duly sanctioned by the Municipal Committee and the evidence in the form of notice by the Municipal Committee, Nahan, dated August 26, 1983, calling upon the landlord to undertake repairs of the building or dismantle the same and when the landlord failed to do so in pursuance of the notice, a complaint, dated October 29, 1983, under Section 111 read with Section 233 of the H.P. M.C. Act, 1968, had been launched for the prosecution of the landlord. All these facts point out the bona fide and genuine claim of the landlord.

18. Therefore, examining the case as aforesaid I am of the opinion that the landlord has established his case as genuine and bona fide.

19. Accordingly, I hold that the finding and the judgments arrived at by the courts below are correct and in accordance with law and the evidence on record and the same are upheld and affirmed. There is no merit in this revision petition and the same is dismissed with no order as to costs. The petitioner is, however, allowed three months' time to hand over the vacant possession of the premises to the landlord.

