

Krishan Kumar Vs. Jagjit Kaur

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Court : Himachal Pradesh

Decided On : Dec-07-2009

Judge : Sanjay Karol, J.

Appellant : Krishan Kumar

Respondent : Jagjit Kaur

Advocate for Def. : Shri. Bimal Gupta

Disposition : Appeal dismissed

Judgement :

Sanjay Karol, J.

1. The petitioner- tenant has filed the present petition under Section 24 (5) of the H.P. Rent Control Act, 1987 (hereinafter referred to as the Act) assailing the impugned judgment dated 1.7.2004 passed by the Appellate Authority-I, Sirmaur District at Nahan, H.P. in Rent Appeal No. 5-RA/14 of 2003 titled as Krishan Kumar v. Jagjit Kaur, affirming the findings recorded by the Rent Controller, Court No. 2, Paonta Sahib, vide order dated 28.3.2003 passed in Rent Petition No. 3/2 of 2001 titled as Jagjit Kaur v. Krishan Kumar.

2. The petitioner herein is the tenant and the respondent herein is the landlady and are referred to as such in the present revision petition.

3. The landlady filed a petition for eviction of the tenanted premises comprising of a shop (3.15 mtrs x 8.70 mtrs.), on the ground that the construction is very old and for the purposes of constructing a Shopping Complex and a residence, eviction of the tenant is necessary as without demolition of the shop reconstruction cannot take place. Her requirement is bonafide for the said purpose as the existing old structure, cannot take the load of the new construction. The plinth level being low, during rainy season water flows into the shop. She along with her husband and three children are residing in USA and wants to reconstruct the premises for their residence. The tenant is also in arrears of rent and liable to be evicted on these grounds.

4. The tenant opposed the petition by challenging her bonafides as earlier an unsuccessful attempt to forcibly dispossess him had been made by the landlady for which not only the matter was reported to the authorities but even Civil Suit was also filed. Since the landlady along with her family members permanently resides in USA there is no requirement of the shop for her own bonafide use. In any event, the proposed construction can be carried out without vacating the shop and demolishing the existing structure.

5. Based on the pleadings of the parties, the trial Court framed the following issues:

1. Whether the premises are bonafide (sic) for reconstruction as alleged?..OPP
2. Whether the alleged construction could not be made with (sic) vacating the alleged premises as alleged?...OPP
3. Whether the respondent is in arrear of rent w.e.f. June 2000 till today at the rate of Rs. 1000/- per month as alleged? ...OPP
4. Whether the petition is not maintainable as alleged? ... OPR
5. Relief.
6. Opportunity to lead evidence was afforded to the parties.

7. The Rent Controller found the tenant to be in arrears of rent w.e.f. July 2000 upto 31.10.2000 @ Rs. 1000/- per month and thereafter @ Rs. 1200/- per month. The petition was found to be maintainable and considering the statements of the witnesses examined by the landlady and more particularly that of the experts Shri Mohinder Singh (PW-4) and Shri Rohit Kathuria (PW-5), the Rent Controller observed that one of the other tenants had already vacated the adjoining shop and after demolishing the same alongwith the residential portion in her possession, the landlady has raised construction on part of the land owned by her. Her requirement was bonafide, she was possessed with sufficient funds to carry out the reconstruction in terms of the plan (Ext.PW-3/A) sanctioned by the Municipal Authorities and the building cannot be reconstructed without the shop being vacated by the tenant. Accordingly, order for eviction was passed against the tenant.

8. The first Appellate Authority agreed with the findings returned by the Rent Controller, both on the issue of nonpayment of rent and the landlady's bonafide requirement for reconstruction as the existing structure of the shop being weak would not take the load of the proposed construction.

9. Mr. Bhupender Gupta, learned senior counsel for the tenant, while assailing the impugned order has made the following submissions; (i) in the absence of common reasoning given by the Courts below, the findings of fact cannot be said to be concurrent in nature; (ii) the eviction petition filed through an attorney is not bonafide as not only the landlady is permanently settled in USA but a forcible attempt was made to dispossess the tenant, (iii) she has set up a false case disentitling her for the relief prayed for; (iv) it is a case of wrong visualization of correct principles of law and perverse appreciation of facts which has led to fallacious findings; the grounds of personal requirement, premises being unfit for habitation and bonafide requirement for re-construction have been intermingled. It is also not her case that she wants to augment her income by raising a new construction; (v) in the absence of any findings of the landlady's bonafide requirement of the premises required for reconstruction, the first Appellate Court could not have passed an order for ejectment. Per contra, S/Shri Bimal Gupta and Navlesh Verma, learned Counsel for the respondent-landlady have supported the

judgment for the reasons set out therein.

10. Having heard learned Counsel for the parties and also perused the record, certain undisputed facts emerging from the record are as under:

The landlady is the owner of land comprising khasra Nos. 220/5/2 and 288/225/5, Ward No. 8, Paonta Sahib Distt. Sirmaur. This plot is rectangular in shape. The land is situated near the Bus Stand. Originally towards the main road and the front portion of the plot there were two shops and on the rear portion there was a residential house occupied by the landlady. These shops were let out. In the year 1992 the shop in question was let out to the tenant by the landlady's mother and after her death a fresh agreement dated 15.11.1997 was executed by the parties and the shop was let out for a period of three years on a monthly rental of Rs. 1000/-. The lease was to expire on 31.10.2000.

11. After her husband got employment in a Gurudwara in USA, since 1998-99 the landlady and her family is residing there. Since then the size of her family has also grown. In the year 2000 she visited India and intended to raise construction on the plot. Hence, she got a plan sanctioned from the Town and Country Planner, District Sirmaur, Nahan on 15.7.2000 and the Municipal Authorities on 22.7.2000 for the construction of a three storeyed house with the Shopping Complex on the ground floor and residential portions on the upper floors. Thereafter, Shri Balwant Shahi, the tenant of the other shop vacated the shop in his possession. The tenant filed a complaint with the police requesting for protection from forcible dispossession from the shop. On 1.2.2001 the landlady instituted the eviction petition in question. She not only got the existing structure in her possession demolished, but on the rear portion of the plot partly raised construction upto the first floor level with six shops on the ground floor. Scope of Revisional Jurisdiction

12. Section 24 Sub-section 5 of the Act which reads as under:

Section 24(5); The High Court may, at any time, on the application of any aggrieved party or on its own its motion call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass

such order in relation there to as it may deem fit.

13. In *Ramniklal Pitambardas Mehta v. Indradaman Amratial Sheth* : AIR 1964 SC 1676, the Apex Court has held that where the Rent Controller had jurisdiction to decide the question of interpretation of the statute in a revision petition the High Court may not interfere with the orders passed by the Appellate Authority even if it had gone wrong on facts or law.

14. This Court in *Kuldip Kumar Sharma v. Nirmal Chandel* 1996(2) S.L.J. 1329 had the occasion to deal with the scope of interference by the High Court in a revisional jurisdiction under the Act. It observed that 'In Section 24(5) of the Himachal Pradesh Urban Rent Control Act, 1987 the same expression 'legality or propriety of such orders or proceedings' has been used and, therefore, I may now sum up the powers of this Court in exercising revisional jurisdiction in view of the above ratio laid down by the apex court. The revisional powers of this Court under the H. P. Urban Rent Control Act, 1987, is wider than the powers under Section 115 C.P.C., which is confined to jurisdiction. High Court can interfere with the concurrent findings of fact while exercising the revisional powers, but before doing so the court shall have to record its satisfaction that the concurrent findings recorded by two courts below are perverse and erroneous which manifestly appear to be unjust.'

15. The view taken by the Apex Court in *R.V.E. Venkatachala Gounder v. Venkatesha Gupta and Ors.* : (2002) 4 SCC 437 & *Harrington House School v. S.M. Ispahani and Anr.* : (2002) 5 SCC 229 was reiterated by this Court in *Sanjay Thakur v. Asha Devi and Ors.* Latest H.L.J 2006 (HP) 679. wherein it is held that for the requirement to be bona fide it must disclose sincerity of desire, genuineness of purpose as to enable the Court to hold that the necessity so pleaded is genuine, honest and not tainted by any other purpose.

16. In *Hari Shankar and Ors. v. Rao Girdhari Lal Chowdhury* AIR 1963 SC 698, the Apex Court while dealing with the scope of the revisional jurisdiction of the High Court under the Delhi and Ajmer Rent (Control) Act (38 of 1952), whereby the High Court could call the record for the purposes of satisfying itself as to whether the decision was according to law, it was held that the High Court could

not interfere merely because it could have arrived at a conclusion different than arrived at by the authority below. The High Court cannot reassess the value of the evidence and substitute its own conclusions of fact in place of those reached by the Courts below.

17. But however in *Pooran Chand v. Moti Lal and Ors.* : AIR 1964 SC 461, the Apex Court while again considering the question of scope of interference by the High Court under the said section was of the view that it is neither possible nor advisable to define with precision the ambit and scope of the said section and it should be left to the High Court to consider in each case whether the impugned judgment is according to law or not as according to law is not to be equated to errors of law or of fact simpliciter, it refers to the over all decision which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law.

18. In *Phiroze Bamanji Desai v. Chandrakant M. Patel and Ors.* : AIR 1974 SC 1059, the Apex Court while examining the ambit and scope of the revisional jurisdiction of the High Court under Section 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) held that High Court can interfere only if there is a miscarriage of justice due to a mistake of law.

19. In *P.S. Pareed Kaka and Ors. v. Shafee Ahmed Saheb* : 2004 (5) SCC 241 while examining the ambit and scope of the revisional jurisdiction of the High Court under Section 50 - Karnataka Rent Control Act, 1961 containing the words 'legality and correctness of the decision', the Apex Court held that the expression 'legality and correctness of the order of the trial Court would include examination as to the correctness involving the correct appreciation of evidence and the High Court can interfere if the finding of the Rent Controller is entirely improbable'. Scope of Section 14(3)(c) of the Act

20. It is a settled law that while seeking ejectment of the tenant on the ground that the tenanted premises are required bona fide by the landlord for the purpose of rebuilding or reconstruction or making thereto any substantial additions/alterations, the landlord is not required to show the condition of the building and prove that it has become dilapidated, unfit and unsafe for human habitation. The

landlord has to only show that his requirement is bona fide and that such building or rebuilding or additions/ alterations cannot be carried out without the building being vacated. [Inder Pal Thakur v. Hukam Chand and Anr. 1997 (3) Sim. L.C. 358 and in Gulzari Lal Jaggi v. Smt. Kamlesh Kumari and Ors. Civil Revision No. 338/98, decided on 29.4.1999].

21. While interpreting Section 14(3)(c) of the Act the Apex Court in Prem Chand v. Shanta Prabhakar : (1998) 1 SCC 274, has held that:

Section 14(3)(c) of the H.P. Rent Control Act contemplates different independent situations/ circumstances enabling the landlord to apply for eviction of a tenant. Those different and independent situations/ circumstances can be set out as follows:

(i) When the tenanted premises are required by the landlord 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

(ii) When the tenanted premises have become unsafe or unfit for human habitation; or

(iii) When the tenanted premises are required bona fide by the landlord for carrying out repairs which cannot be carried out without such tenanted premises being vacated; or

(iv) When the tenanted premises are required bona fide by the landlord for purposes of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the building or rented land being vacated.

22. In Jagat Pal Dhawan v. Kahan Singh : 2003 (1) SCC 191, the Apex Court has further held that:

Section 14 (3) (c) of the H.P. Urban Rent Control Act, 1987 provides inter alia that a landlord may apply to the controller for an order directing the tenant to put the landlord in possession of tenancy premises in case of any building or rented land

being required bona fide by him for the purpose of building or rebuilding which cannot be carried out without the building or rented land being vacated. The provision does not have as an essential ingredient thereof and as a relevant factor the age and condition of the building. The provision also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of tenant. However, the court may look into such facts as relevant, though not specifically mentioned as ingredients of the ground for eviction, for the purpose of determining the bona fides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be bona fide.

The fact that demolition and reconstruction would result in modernization, making additional space available and/or would augment the earning of the landlord is relevant factors for determining the bona fides of the requirement for demolition and reconstruction.

23. The case has to be considered in the light of the aforesaid principles of law.

24. The contention that the Courts below have furnished different reasons while arriving at their conclusions is not correct. The Courts below have examined the material in entirety and the first Appellate Court has agreed and concurred with the findings and reasons furnished by the Rent Controller.

25. The fact that the tenant was in arrears of rent is not disputed at all.

26. The impugned orders are clear and there is no intermingling of the grounds of ejection. The landlady has filed the eviction petition on the ground of non-payment of rent and her bonafide requirement is for the purposes of rebuilding i.e. circumstance No. (v) as observed by the Apex Court in Prem Chand (supra).

27. Plans for reconstruction of the building stands duly sanctioned by the Municipal authorities is evident from the statement of Shri Om Parkash (PW-3)

Clerk of the Municipal Authority, who has proved sanction letter Ext.PW-3/B and Plan Ext.PW-3/A.

28. It is the case of the landlady as proved through her attorney Shri Tajinder Singh (PW-2) that part of the reconstruction has already taken place with the complete foundation upto depth of 4 feet, filled with cut stones with cement concrete and the plinth level raised is almost 2.5 feet above the road level. New construction is of RCC cement. The foundation of the pillars is 10 feet deep. The height is also 10 feet where concrete slab/lintel of the first floor level has been laid.

29. According to Shri Mohinder Singh Kainth (PW-4) Assistant Engineer Retired Executive Engineer, an expert produced by the landlady, reconstruction as per the proposed plan cannot be carried out on the existing tenanted premises. In fact, this position also stands admitted by Shri Baldev Krishan (RW-4) and Shri M. R. Arya (RW-5), the experts examined by the tenant. As per PW-4, the foundation of the shop is partly of random rubble masonry in lime mortar and partly of brunt brick work in cement mortar and that too, only upto two feet. The foundation is weak and no plinth level has been kept for raising the super structure on the ground level. His report Ext.PW-4/A to the said effect stands proved by him. His version stands corroborated by Shri Rohit Kathuria (PW-5).

30. No doubt, RW-4 has stated that the disputed shop is constructed on the pucca structure of sand and cement, having 6 pillars and three beams and that there are no cracks in the wall but however, he has admitted that the entire reconstruction work has not been carried out by the landlady. Importantly, he has admitted that as per plan Ext.PW-3/A, sanction is for construction of three floors and two floors can be constructed on the shop but however it has to be supported by the pillars from below and for raising construction upto 10 feet height, the pillars have to be dug by 6 to 8 feet deep into the ground. His report Ext.RW-4/A is to prove that the existing construction of the shop is neither old nor in a dilapidated condition, but, however, he has admitted that he has not dug the existing pillars of the shop to ascertain their level of depth.

31. Shri M. R. Arya (RW-5) has proved his report Ext.RW-5/A and plan Ext.RW-5/B, but however this report is more to prove the fact that there is a drain in

between the road and the shop and water does not flow into the shop. Even this witness has admitted that if the construction is to be carried out as per the proposed plan the shop would have to be dismantled. He has volunteered to state that only one storey could be constructed on the tenanted premises.

32. That apart, the dimension of the tenanted shop is just 3.15 mtrs. x 8.70 mtrs. and if the foundation for laying the pillars has to be 6 to 8 feet then almost the entire shop would have to be dug up. Thus, looking from any angle the reconstruction as per the proposed plans cannot be carried out by the landlady without the shop being vacated by the tenant.

33. Hence, the authorities below have rightly come to the conclusion that the tenanted shop is required bonafide by the landlady for the purposes of reconstruction which cannot be carried out without the same being vacated by the tenant.

34. It is not the landlady's specific case that she wants to reconstruct the shop to be used by any of her family members. Her specific pleaded case being that she wants to reconstruct the premises with a Shopping Complex on the ground floor and the residential portions on the first and the second floors. The reconstruction would add to the value and utility of the property. It is also her specific case that the other tenant vacated the shop in July 2000 and the present tenant was allowed to continue to occupy the shop till the expiry of the lease period. It is her specific case that because of weak foundation of the shop reconstruction on the sanctioned lines cannot be carried out.

35. An attempt has been made to show that the petition contains false averments with regard to the water logging in the area and the drain water coming into the shop. No doubt there is enough material to show through the statements of S/Shri Tajinder Singh (PW-2), Om Parkash (PW-3), Shri Balwant Singh (PW-4), Mohinder Singh Kainth [PW-4 (sic)] & Rohit Kathuria (PW-5) that a proper drain has been constructed by the Municipal Corporation, Paonta Sahib but however considering the view I have already taken, I am not going into this question. It is not the landlady's case that reconstruction is necessitated due to this reason alone. There is no dispute that the plinth level of the tenanted shop is not 21/2 feet

which is the level proposed in the sanctioned plan. The new construction is at this level.

36. There is no evidence to establish that the landlady has permanently settled in USA. She has come to India and appeared as PW-1 and deposed in the instant case. Undoubtedly her children are married in India. In fact it is the tenant's own admitted case that the first floor of the new construction is in her possession. She has kept it for her residence.

37. The landlady wants to reconstruct the building for better utility which is totally a justifiable and bonafide reason. Plan Ext.PW-3/A indicates that the landlady has already got six shops constructed on the ground floor. There is a passage in the middle with three shops each on both the sides. Now if the construction on the entire plot is to be raised as per the sanctioned plan, the tenanted shop has to be dismantled. This is absolutely necessary to have all the shops in symmetry with the passage throughout in the centre. In fact the other shop was got vacated only to have the construction carried out as per the sanctioned plans.

38. There is no doubt that while appreciating the statement of PW-4 the first Appellate Court has erred in recording its findings in para -24, but however, merely for this reason the order cannot be set aside.

39. It cannot be held that the petition has been filed with a malafide intent or purpose. Assuming that the landlady may have attempted to get the tenanted premises vacated forcibly, but that fact alone would not make her actions malafide. The tenancy period was also to expire around that time. The tenant may be enjoying statutory protection, but was morally bound to honour the word given to the landlady. The landlady has demolished her existing structure and raised part construction thereupon. This by itself is indicative of her bonafide intent and requirement.

40. There is evidence to prove that out of the newly constructed shops, landlady's nephew son of Shri Tajinder Singh has occupied three shops. But however that also would not make any difference as it is not the landlady's case that the shops are required for her bonafide personal requirement or for the requirement of her

family members. In fact the admitted case of the parties is that three shops are still lying vacant which is only indicative of the fact that the landlady's requirement of constructing a Shopping Complex is not a mere desire or a wish.

41. The parties have made rival contentions about the exact nature of the construction of the tenanted shop. I am not going into this question as it is not the case of the landlady that the premises are unfit for human habitation. Therefore, whether the construction of the tenanted shop is old, has developed cracks or is unfit for human habitation is immaterial.

42. In *Kuldip Kumar Sharma (supra)*, the Court was dealing with a case where 75% of the construction had been completed by the landlord and only the demised premises were required to be reconstructed in accordance with the sanctioned plan. Such reconstruction could not be carried out without causing damage to the tenanted premises and shifting of the tenant's luggage therefrom. In these circumstances, the Court upheld the order of ejectment passed by the authorities below. The ratio laid down in the said decision applies with equal force in the facts of the present case.

43. To my mind, the bona fide claim of the landlady stands established beyond any shadow of doubt. Relevant circumstances to establish the same are that the landlady has got the plan sanctioned from the Municipal Authorities. She has carried out part construction on the rear portion of her plot after demolishing the constructed portion in her possession. Her financial capacity to carry out the construction is not in doubt. There is sufficient evidence to prove that the landlady wants to put the premises to better use and occupy the upper storeys as her residence. Simply because she is residing in USA that by itself would not disentitle her from owning and possessing a house in India. It cannot be disputed that her children are married in India. She has close relatives living in Paonta Sahib itself. Hence, even on occasional visits, few and far between, she cannot be left at the mercy and convenience of her relatives for the purposes of her residence. It has already come on record that she owns no other premises in Paonta Sahib.

44. I have perused the record and am of the considered view that neither the view taken by the authorities below is erroneous nor perverse. The evidence has been

correctly appreciated in its entirety. There is no manifest mistake of law or fact resulting into miscarriage of justice. The view taken by the Rent Controller cannot be said to be entirely improbable. Hence no interference is warranted at all. The landlady has shown her sincerity of desire, genuineness of purpose and honest intention.

45. It cannot be said that the authorities have erred in appreciating the facts and law or that the findings are fallacious in any manner.

46. The concurrent findings of fact recorded by the two authorities below are based upon relevant material on record and cannot be reversed by this Court while hearing a revision petition under the provisions of the Act.

47. For the aforesaid reasons, I find no infirmity with the impugned orders passed by the Courts below. The appeal is accordingly dismissed.

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