

(1988) 05 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 843 of 1983

Bimla Devi and others

APPELLANT

Vs

Des Raj (Died) and his L. Rs. Smt. Bhagwanti

RESPONDENT

Date of Decision : 09-05-1988

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 17A

Citation : (1988) 05 P&H CK 0021

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : H.L. Sarin, with Miss Jaishree Thakur, for the Appellant; Arun Jain, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The challenge here is to the order of eviction passed against the tenant on the grounds that the demised premises have become unsafe and unfit for human habitation. The finding to this effect clearly warrants no interference in revision.

2. The demised premises is a shop, which is part of a building comprising two adjoining shops too. According to the two experts examined by the landlord namely, A.W. 1 Nand Lal and A.W. 4 Daljit Singh, both Executive Engineers, the building in question was over 70 years old and had out lived its utility and was in a condition where it could at any time fall. A.W. 4 Daljit Singh found that the battans of the roof have been eaten up rendering the roof unsafe and the building was in a dilapidated condition.

3. To counter this, the tenant examined R.W. 1 Dwarka Parshad, a retired Overseer. His report no doubt sought to dispel the suggestion that the building was unfit and unsafe for human habitation, but it is noteworthy that he was constrained to admit that the back wall was of very small bricks which were in use more than 100 years ago and that the roof in front was only of corrugated

iron sheets. A reading of this report would suggest that this witness had confined his inspection only to the shop in the occupation of the tenant and not the two adjoining shops of which it was a part.

4. The record shows that when the appeal was pending before the Appellate Authority, the demised premises were also inspected by the Presiding Officer of the Appellate Court and according to his note too more than half the roof of the back room of the building was lying demolished and a bare look at the building would show that it was old and unsafe and unfit for human habitation.

5. It is also pertinent to note that the two adjoining shops of which the demised premises was a part had already been got vacated by the landlord and were lying vacant and plans for reconstruction of the entire building have already been submitted by him to the Municipal Committee for sanction. It will thus be seen that there is overwhelming evidence to establish the state and condition of the building namely that it was unsafe and unfit for human habitation. There was, infact, only a half hearted attempt made in revision here to seek to question the finding in this behalf.

6. Faced with this situation, counsel for the petitioner sought to raise a technical plea founded upon Section 17-A of the East Punjab Urban Rent Restriction act 1949 (hereinafter referred to as the "Act") to question thereby the very jurisdiction of the Appellate Authority to hear and decide the appeal in the present case. Section 17A of the Act is in the following terms:-

17-A. Power to transfer proceedings from one appellate authority or controller to another (1) The High Court may, on an application made to it or otherwise, by order transfer any proceeding pending before any appellate authority to another appellate authority and the appellate authority to whom the proceeding is so transferred may, subject to any special direction in the order of transfer, dispose of the proceeding.

(2) An appellate authority may, on an application made to it or otherwise, by order transfer any proceeding pending before any authorities within its jurisdiction and the Controller to whom the proceeding is so transferred may, subject to any special direction in the order of transfer, dispose of the proceeding.

The argument being that as the appeal had been filed in the Court of District Judge (as Appellate Authority) under the Act, it was only that Court that could hear and decide the appeal and not an Additional District Judge (again as Appellate Authority) to whom it had been sent by the District Judge. In this behalf counsel for the petitioner sought to raise a fine distinction between "entrustment" and "transfer" of the appeal. While it was conceded by counsel for the petitioner that a District Judge is empowered to entrust an appeal to an Additional District Judge, the authority for the transfer of an appeal from one Appellate Authority to another, it was argued, was only that of the High Court as per the provisions of Section 17-A of the Act. Reliance in this behalf was sought to be placed upon an order of this Court in Civil Miscellaneous No. 29-M of 1982

Amar Singh v. Shiv Ram C.M. No. 29 M of 1982, decided on May 14 1982 which was the case of a transfer by the District Judge, of an appeal under the Act, from one Additional District Judge to another. This order of transfer was quashed on the ground that in view of the provisions of Section 17-A, it was not disputed that a District Judge has no jurisdiction to transfer an appeal pending before an Appellate Authority. This is not the situation in the present case. Here it is from the Court of District Judge that the appeal was sent to the Additional District Judge and that too by an administrative order. This thus, provides no occasion for seeking to question the jurisdiction of the Appellate Authority to have heard and dealt with this matter in the context of the facts of the present case.

7. In dealing with this matter, it must be borne in mind that this is not a case of any inherent lack of jurisdiction in the Appellate Authority and what is more no such objection was raised at any time before the Appellate Authority. It is for the first time in revision here that such a point has been urged. Further, counsel for the petitioner has not been able to point to any failure of justice or prejudice arising from the appeal having been heard by this particular Appellate Authority precedent of relevance is provided here by the judgment of P.C. Pandit J in Civil Revision No. 1090 of 1970 Banwari Lal v. Gaja Nand C.R. No. 1090 of 1970 decided on February 12, 1971. What was questioned there was the entrustment of an application for ejectment under the Act by the Senior Subordinate Judge (as Rent Controller) to the Additional Rent Controller. The argument again being that in view of the provisions of Section 17-A of the Act, it was only the Appellate Authority that could transfer such proceedings from one Rent Controller to another. This was repelled by the Court holding that this was a mere entrustment of the application to the Additional Rent Controller, which the Senior Subordinate Judge was competent to do.

8. There is thus, no substance in the contention raised and it cannot, therefore, be sustained.

9. This revision petition is accordingly hereby dismissed with costs. Counsel's fee Rs. 50/-.