

(2012) 09 P&H CK 0196
In the Punjab And Haryana At Chandigarh
Case No : CR No. 1108 on 1995 (O and M)

Chatterbhuj Lilawati Trust, Panipat

APPELLANT

Vs

Smt. Raj Rani

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Citation : (2012) 168 PLR 517

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : C.B. Goel, for the Appellant; Harish Bhardwaj with Mr. Harkesh Manuja, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The landlord is the revision petitioner. He had filed a petition under the Haryana Urban (Control of Rent and Eviction) Act for eviction on the ground that the property is required for personal use and occupation, namely, of the requirement of the landlord to extend the hospital and that the building had become unsafe and unfit for human habitation. The petition had been allowed by the Rent Controller but the decision was set aside in appeal by the Appellate authority and hence the revision petition. While examining the nature of construction, to test that it was safe and habitable, the Appellate authority took note of the contention of the landlord that the demised premises was 80 years old but the petition itself had not given any specific detail about the condition of the building. There was no averment that the beams developed cracks or the rooms were in dilapidated condition or floor was broken and the rafters have been eaten by white ants. These according to the Appellate authority ought to have been specifically pleaded and could not have been allowed to be brought to evidence without specific evidence. AW1 Rama Nand, AW2 Pawan Kumar and AW3 Kedar Nath had given evidence to the fact that the building was 70/80 years old and it was in a dilapidated condition. In the cross-examination of the witnesses, it was elicited that the Municipal Committee was alleged to have

issued several notices with regard to the dilapidated condition of the building but the documents had not been provided as evidence. AW3, a retired official from PWD department, claimed that he inspected the building and had drawn a report with plan. The Appellate authority tested the quality of his evidence by his inability to state the material which had been used for construction. He also admitted in evidence that he had not tested the strength of the materials in any laboratory. It was also elicited that the report did not make any mention about the cracks in the walls but he only gave such an oral testimony. He spoke about the rear wall of the construction being disintegrating, which did not find mention in the report. His own assessment of the age of the building was by his physical verification that the Nanak Sahi bricks had been used along with chuna (lime). He had also noticed that there were cracks in the beams which were running along the roof varied from 1/16" to 1/4" and 2" to 3". The Appellate authority discounted these tracks as irrelevant, for, the cracks need not result in the total disintegration of the building.

2. The respondents also placed the evidence of a retired SDO as RW2 who also claimed that he inspected the building and found the same fit for human habitation. He did not find any of the damage beams or wooden rafters. The Appellate authority was referring to a judgment of the Supreme Court in *Piare Lal v. Kewal Krishan Chopra* (1988 (2) RCR 32 when it observed that cracks were shown, to exist it could only prove that it would require a repair but might not necessarily mean that the building is unfit and unsafe for human habitation.

3. I find that there is a very artificial straining of language of what constituted the structural safety of the building. A building which is 70/80 years old need not necessarily become unsafe. Many large Mehals and Palaces have survived for centuries and more, but it cannot be said of the same thing for small time shops or ordinary constructions. They are not to last for generations unlike buildings of historical importance that housed Maharajas and public offices. We are confronting a situation of a Trust that runs a hospital which has come by a possession of property which was constructed a long time back using age old material for construction like lime and mortar and Nanak Sahi bricks. It is in evidence that the landlord had evicted other tenants to make way for construction of expansion for hospital which it was running. This was precisely stated to be an additional ground for eviction that the Trust was contemplating to construct a new building. The Court again discounted this requirement of the landlord by reasoning that the landlord had not placed any plan to show the proposed construction. Preparation of plans for new construction could be relevant to test the bona fides but if the plan has not been produced, at least in the manner in which the Court proceedings take place, ought not to be taken as conclusive against the bona fides of the landlord. Any landlord who comes to Court knows that he locks up his property in litigation for a minimum period of 20 years. This case has commenced through a petition instituted on 15.05.1985. To what avail that a plan prepared in the year 1985 could have relevance at this length of time is anybody's guess. This cannot be identified as merely an

avaricious attempt of landlord to evict a tenant and increased his income. On the other hand, the requirement was brought out by a resolution of the Board of Trustees authorizing a person to initiate action for eviction so that the old portion of the building which is in the occupation of tenant could be used for further expansion of the hospital. I will have no reason to suspect the bona fides. I would find the evidence brought by the landlord was substantial to gather appropriate inferences on the condition of the building. If there was an averment in petition that the building was old and became unfit and uninhabitable and there was evidence brought through three witnesses that showed that the condition of the building was dilapidated, a denial by the tenant, if there was any that the building was not old and dilapidated would hardly be appropriate to reverse the finding of the fact rendered by the Rent Controller. In revision also, it could be proper only where the Appellate authority was not considering all the aspects brought before it. The Appellate Authority unjustifiably rejecting every bit of evidence brought by the landlord. I will again not find the requirement of a Trust to be viewed as suspicious when the requirement of expansion of hospital was stated to be the real cause of action for eviction.

4. The learned counsel brings before me proceedings initialed contemporaneously for eviction of other tenants where eviction orders had been passed in civil revision filed by the very same Trust in CR No. 2458 of 1989. This Court had ordered the ejectment and allowed the civil revision petition against tenant. Another tenant Dalip Singh had been evicted by the order the Appellate authority in Rent Appeal No. 2 of 1999 decided on 12.11.1999. A tenant by name Krishan had been evicted by the order of Rent Controller in Rent Case No. 27 of 1985 by the decision rendered on 14.03.1992. Another tenant by name Dev Raj had been evicted by the order passed by the Rent Controller in Rent Case No. 28 of 1984 on 22.02.1989. Yet another tenant Budh Ram has been ordered to be evicted through a judgment rendered by the Appellate authority in Rent Appeal No. 3 of 1989 by a decision rendered on 13.10.1990. I find that in all these cases, the revision petitioner before this Court was also the landlord. The need given was the same. The condition of the building of the shops was stated to be same. In a case where every other tenant had been evicted, it has to be possible for the landlord to set its own building in order. There cannot be a resistance by merely a one tenant to allow for old construction to remain sticking out like sore thumb. The order passed by the Appellate authority would require to be set aside and I hold the contention of the landlord for eviction as tenable for both the grounds stated in the petition. The civil revision is allowed and there shall be one month time for eviction.