

(1989) 07 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 153 of 1980

Dharminder Nath and others

APPELLANT

Vs

Udham Singh Shopkeeper Machhi Bazar, Kapurthala

RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Citation : (1989) 07 P&H CK 0094

Hon'ble Judges : Manmohan Singh Liberhan, J

Bench : Single Bench

Advocate : Malkeet Singh, for the Appellant; H.L. Sarin with Miss Jayshree Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh Liberhan, J.—This revision petition arises out of an order of the Appellate Authority declining the ejectment of the Respondent on the ground of the building being unfit and unsafe for human habitation.

2. The Petitioners sought ejectment of the Respondent on the grounds, viz, (i) that the building is unfit and unsafe for human habitation; and (ii) that the Respondent has not paid the arrears of rent from February 1, 1968. However, subsequently by amendment, the ejectment was sought additionally on the ground that the tenant has committed such acts whereby the value and utility of the premises in dispute has been materially diminished.

3. The Rent Controller found that the building is unsafe for human habitation. However, it was found that fixing of wire-gauge door, the only material alteration pointed out, does not amount to material structural alteration which can make the Respondent liable for ejectment. However, the issue of non payment of rent was not pressed as the rent was tendered on the first date of hearing. The Rent Controller ordered ejectment of the Respondent on the ground that the building was not fit for human habitation.

4. The tenant preferred an appeal and the lower appellate Court, after appraising

the evidence, came to the conclusion that the building cannot be said to be unfit and unsafe for human habitation solely on the ground that the building is 60 years old and reversed the finding of the Rent Controller, accepted the appeal and dismissed the application for ejectment.

5. The learned Counsel for the Petitioners contends that the findings arrived at by the lower Appellant Court that the building is not unfit and unsafe for human habitation cannot be sustained. It is contended that undisputedly the building is 50/60 years old built in mud mortar and is of irregular shape. He further contended that since the building has got three roofs with different type of material i.e. on a part of the building the roof is made of G.I. Sheets and in the other two portions either wooden planks or tiles have been used, it should be assumed that the roof has been falling from time to time and has been repaired by the tenant according to the exigencies using the material available. It should be further assumed that in view of the material used, it should be assumed that the roof is not safe and is liable to fall. It was further contended that the fact that the roof is not safe finds support from the statement of A.W. 1 the expert of the landlord corroborated by the statement of R.W. 1 and the report Exhibit R--1 of the expert produced by the Respondent. It is further contended that the witnesses produced by the Petitioners support the fact that the walls of the shop are in poor condition and are standing with the provisional support provided by the Respondent from time to time. Thus the shop in dispute is in a dilapidated condition and is unfit for human habitation.

6. I have gone through the statements of the witnesses as well as the report of the expert. Except the self serving statement of the landlord Petitioner that the roof of the shop in dispute was changed from time to time there is no reliable evidence worth the name on the record to come to a conclusion that the roof was ever changed by the tenant. There is no evidence on the record that the roof of the shop in dispute ever was of one material alone. Mere fact that the shop is of irregular shape i.e. geometrical in nature cannot lead to an inference that the material for roof has not been used according to the contingency of the area. There is nothing on the record to show that the tenant has ever; changed the roof or any portion thereof, moreover solely the roof having been changed does not make the shop unfit for human habitation in particular when even according to the Petitioners various materials in a continuous period of more than two decades without any objection being raised by the landlord. When the ejectment is being sought solely on the ground of the building being unfit and unsafe for human habitation, the condition is to be seen on the date the application was made though change in circumstances can be taken note of. Nothing substantial has been pointed out to take a view other than the one taken by the lower appellate authority. In the entire argument addressed by the counsel for the Petitioner and reproduced in the grounds of revision petition, the thrust was towards raising of inference on assumptions and presumptions that the building is unfit and unsafe for human habitation, which cannot be done in law. The facts proved on the record and appreciated by the lower appellate Court do not lead to

any inference that the shop in dispute is unsafe and unfit for human habitation. The only change attributed to the tenant i.e. alleged by the landlord as having been brought about by him is that he has replaced a door with wire gauge without the permission of the landlord. In view of this together with the fact asserted by the landlord it cannot be assumed that the tenant has changed the roof. He might have repaired the roof though there is no evidence on the record to assume that the tenant repaired it at any point of time.

7. The learned Counsel relied on *Shakuntla Devi v. Daulat Ram* (1967) P.L.R. 251 wherein it was observed that for ejectment there need not be an imminent danger to the building as to be likely to fall down soon. The facts and observations made in the precedent cited do not apply to the facts and circumstances of the case in hand.

8. In view of my observations made above and for the reasons recorded by lower appellate Court I affirm the findings returned that the building is not unfit and unsafe for human habitation and merely the age of the building is not sufficient to hold that it has become so. I find no force in the revision petition. The same is dismissed with no order as to costs.