
(1997) 03 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1721 of 1989

Doctor Hukam Chand Dhawan	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

East Punjab Urban Rent Restriction (Amendment) Act, 1985 — Section 15(5)
East Punjab Urban Rent Restriction Act, 1949 — Section 11, 13(3), 15(5)

Citation : (1997) 116 PLR 454

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemani Sarin, for the Appellant; S.K. Bhanot, DAG, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This is landlords' revision directed against the judgments of the Authorities below under the East Punjab Urban Rent Restriction Act, as applicable to Union Territory, Chandigarh, whereby ejectment application filed by the landlord has been dismissed.

2. Petitioner is owner and landlord of residential building, i.e House No. 78, Sector 9, Chandigarh. The ground floor of the building, except one garage, was let out to the Director, Public Relations, Punjab, Chandigarh, initially on a rent of Rs. 1170/- per month. Later, rent was increased to Rs. 1870/- Petitioner sought ejectment of the respondents inter-alia on the following grounds:

- i) that respondents are in arrears of rent since 1.9.1983 onwards;
- ii) that respondents have changed the user of the building from residential to non-residential one inasmuch as they are operating motor vehicle workshop without the permission of the petitioner in writing;
- iii) that the premises in dispute are required by the petitioner for his personal use and occupation and also for occupation of his son who is a practising

Advocate for the purpose of residence and setting up of an office needed by an Advocate; and

iv) that the respondents have impaired the value and utility of the premises. Petitioner in his application for ejectment averred that he is 65 years of age and suffering from High blood pressure and osteo-arthritis and he being in possession of 1st and 2nd floor of the house, the same is not suitable for him or his wife. In the amended ejectment application filed before the appellate Authority, it was also averred that the premises in dispute are also required for the married son, who is dependent upon the petitioner, for the purpose of residence. On notice of the application, the respondent in their written statement denied that they have changed the user of the premises or the petitioner needs the premises for his bona-fide use and occupation, or that the respondents have impaired the value and utility of the premises. On the pleadings of the parties, the following issues were framed by the Rent Controller

1. Whether the respondents are liable to be evicted on the grounds alleged? OPP.
2. Whether the petitioner has no right to evict the respondent from the demised premises ? OPR.
3. Relief.

Rent Controller found both the issues against the petitioner and consequently, dismissed the ejectment application. In appeal by the landlord, the judgment of the Rent Controller has been affirmed.

3. In this revision petition filed by the landlord, it has been contended by the learned counsel that the entire approach of the Authorities below to the determination of material questions of facts, law and jurisdiction arising in the decision of the present case is wrong. He contended that the demised building is admittedly a residential building and it has been proved on record that the respondents are using the same as workshop and due to this action of the respondents, the building has been ordered to be resumed by the Estate Officer and an appeal in this regard is pending before the appellate Court and has been adjourned to await the decision of this revision petition. Counsel has contended that the report of the Local Commissioner has not been considered in proper prospective by the Authorities below. In regard to the ground of personal necessity, counsel has contended that considering the size of the family of the petitioner and the accommodation in his possession, the Authorities below have gone wrong in saying that the accommodation available with the petitioner is more than sufficient to satisfy his need and that of his family members. As regards the ground of impairment of value and utility of the premises by the respondents, counsel has contended that the respondents without petitioner's permission have put the building for using it as junk-yard/workshop, exposing the petitioner to peril of resumption of building by the Estate Officer. He has also contended that it has been proved on record that by demolishing the gate, damaging the pillars, sanitary-wares, windows, verandah etc., the respondents

have impaired the value and utility of the premises and thus, have rendered themselves liable for eviction. In answer to these submissions, Mr. S.K. Bhanot, DAG Punjab, counsel for the State, has submitted that the finding recorded by the Authorities below on all issues being finding of fact is not to be interfered with by this Court in revisional jurisdiction.

4. After hearing the learned counsel for the parties at length and on going through the record, I am of the view that the revision petition deserves to succeed. Section 13(3)(a) of the Act confers a right on the landlord to apply to the Controller for an order directing the tenant to put the landlord in possession in the case of a residential building if he requires it for his own occupation and is not occupying any other residential building in the urban area concerned and has not vacated such a building without sufficient cause after the commencement of the Act, in the said urban area. So far as the requirement and need of landlord is concerned, it is now well settled that the landlord is the final judge. If he considers the existing accommodation insufficient and he is in need of better and more commodious premises, the Court cannot go into the same and arrive at the conclusion that the alleged need is, infact, for extraneous considerations. At the same time, it cannot be disputed that the statement of the landlord in this regard cannot be taken at its face value under all circumstances, but the Court has to proceed on the presumption that normally and generally the landlord is the best judge of his own need and convenience. But if the evidence on record shows that the claim put forward by the landlord is very much exaggerated and is prompted by extraneous considerations, then it will not be beyond the power of the Court to arrive at the conclusion, in a given case, in the peculiar circumstances of the said case, that the alleged claim is not bona-fide. In the present case, there are no circumstances to warrant such a conclusion. On reading of the evidence brought on record in regard to personal requirement of the landlord, I am of the view that both the Authorities below have failed to apply correct principles in determining whether the demised premises are required by the landlord for his own use and occupation. Landlord in his amended ejectment application filed before the appellate Authority has given details of the accommodation in his possession and also the size of the family. The reading of the averments made on in this regard shows that there is no construction on the main building. The first and second floors are constructed only on the annexe portion. The first floor consists of one drawing hall and bed-room. The improvised dining-room is under the stair-case. Its width is only 8 ft. and the size of the kitchen is 8" x 3" x 6" x 6", and the approach to the kitchen is through the Corridor having width of 2"-6". On the second floor, i.e. Barsati floor, there is no bed-room. The height of the ceiling is only 8 feet. The family of the landlord consists of petitioner, his wife, his son, Prem Dhawan, and daughter-in-law, Sunita Dhawan, and two grand-children. One of the grand-children, at the time of filing the amended ejectment application, was studying in 7th class and the second one was aged two years. However, as on today, both the children have grown up and now the elder one is 21 years of age and is college-going and the younger one is 11 years

of age and is school-going. Sunita Dhawan wife of Prem Dhawan, son of the landlord, is posted as Lecturer in English in M.C.M. D.A.V. College for Women, Sector 36, Chandigarh. Landlord has averred that his family is of good status and the Barsati floor is not convenient for their living at all. He has averred that a separate residence is required for his son and other family members. He has further averred that neither he nor his son is in occupation of any other building except the portion of the demised premises, i.e. first and second floors on the annexe portion, and they have also not vacated any building in the area of Union Territory, Chandigarh, after the commencement of the Rent Act. Petitioner while appearing as PW-1 has reiterated what he has stated in his ejectment application. His son, Prem Dhawan, while appearing as PW-6, has stated that he along with his family is residing with his father and they are in possession of one room and drawing-room, dining-room and kitchen on the first floor and two rooms on the second floor. He has further stated that their family consists of five members and apart from the family members, they do receive a good number of guests from their village and his brother also visits them. PW-5, Ram Kishan, has stated that Prem Dhawan, son of petitioner, is his friend and he was a practicing Advocate with him. He has stated that Prem Dhawan had left the practice and joined job because he had no place for an office. He has also stated that petitioner is in possession of drawing-dining room and one bedroom and two rooms on the second floor, and the accommodation in possession of the petitioner is not sufficient for him or his family members. RW-1, Harnek Singh, Draftsman in the Estate Office, U.T. Chandigarh, while appearing as witness for respondents, has stated from the record that demised premises is a residential building and the first floor on the annexe portion consists of three rooms, i.e. hall, 19-9" x 20", 16-9 x 11 x 7", hobby room 12" x 1/2" x 8-3" besides kitchen and store, and one verandah measuring 10-4-1/2" x 20". On the second floor, there are two rooms, i.e. barsati 17-6"x8-3", store 8-3" x 8-3", dress-alcove 6x6-6", one store, verandah, toilet etc. Respondents have not produced any other evidence to show that the landlord is in occupation of any other accommodation then what has been stated by him and RW-1, Harnek Singh. Petitioner has been denied relief by the Authorities below under the impression that petitioner is in occupation of first and second floors constructed on the main building. It escaped the notice of the Authorities below that there is no construction on the main building, but the petitioner is in occupation of first and second floors constructed over the annexe portion. Considering the size of the family of petitioner, as noticed above, and the accommodation in his possession, I am of the view that the finding of the Authorities below that the petitioner is having adequate and suitable accommodation in his possession cannot be sustained. In this regard, it is also to be noticed that petitioner at the time of filing the ejectment application was 65 years of age. Likewise, his wife was also of the same age. Now both of them are more than 80 years of age. Considering their age and the averment made in the ejectment application that they both are patients of osteo-arthritis and there being no rebuttal to this averment by the respondents, I am of the view that it would not be just and proper to ask the

petitioner to adjust himself and his family in a small accommodation and allow the main building to remain with the tenants. The purpose and satisfaction of owning a house is of no avail if one has just to be a by-stander and required to adjust oneself in a make-shift arrangement. For all the reasons stated, I am of the opinion that the ground of personal necessity stands proved. The contention of counsel for the respondents that the building in dispute, may be residential one, had been let out for non-residential purposes and therefore, petitioner is not entitled to seek eviction of the respondents on the ground of personal necessity, is without merit. Section 11 of the Act imposes prohibition to convert residential building into non-residential one without permission of the Rent Controller-. It provides that no person shall convert the residential building into non-residential building except with the permission in writing of the Controller. A Full Bench of this Court in Hari Mittal v. B.M. Sikka (1986)89 P.L.R.1, considered the scope of Section 11 of the Act taking into consideration the decision of the Apex Court in Kamal Arora v. Amar Singh 1985(1) R.L.R. 643, and held that Section 11 is intended to subserve as a public policy of seeing that the residential accommodation do not fall short of community"s requirement, as the shortage of residential accommodation would tend to result in unhygienic conditions of the residential area by accommodating more members than it could legitimately be intended or the extra population resorting to unhygienic use of the open space and pavements and creating social tension and health hazard to the community. It was, therefore, observed that the provisions of Section 11 of the Act are mandatory in character. It was held that this provision is attracted even to a residential building which is in the occupation of the landlord, hence the landlord could not convert it into a self-occupying non-residential building without the permission of the Rent Controller in terms of Section 11 of the Act. There is no denying the fact that the building in dispute is located in a residential part of the sector in the city and user of every building is specified by law. Letting out of such a building for non-residential purpose in violation of Capital of Punjab Act and Section 11 of the Act would not bring it within the fold of non-residential building defined in clause (d) of Section 2 of the Act.

5. The next question to be determined is whether the petitioner is entitled to seek eviction of the respondents on the ground of change of user and the ground of respondents having impaired the value and utility of the premises. Section 13(2)(ii)(b) and (iii) provides a ground for eviction of tenant on these grounds. The same reads as under:-

"Section 13(2):

A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied :-

(i) xxx xxx xxx

(ii) that the tenant has after the commencement of this Act without the written

consent of the landlord -

(a) xxx xxx xxx (b) used the building or rented land for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land."

A plain reading of clause (b) goes to show that a tenant is liable for eviction if he has used the building for a purpose other than that for which it was leased. The basic idea of Clause (b) of Section 13(2)(ii) of the Act is that the tenant should not be allowed to make use of a building for a purpose for which the landlord may not have agreed to give the same on rent. A landlord may have no objection to giving the building on rent to a person who wants to use it for the purpose of office but may not like to let out the same to a person who wants to use it as a workshop/junk-yard. So the Act, in a way provides that the landlord and tenant may agree between themselves as to the purpose for which the building would be used, and if later on the tenant wants to use the building for a different purpose, he must obtain the consent of the landlord to do so. In order to take the matter beyond all controversy, it has been provided that such a consent should be in writing. In the present case, while letting out the building, no lease-deed or rent-note was executed. The ground of change of user has been found against the petitioner on the basis of letter dated 16.8.1971, Exh.D-4, written by the landlord to the Director, Information, Publicity and Tourism, Punjab, Chandigarh. On the basis of this letter, the appellate Authority has opined that the landlord cannot be permitted to say that the respondents are guilty of change of user because they have turned the demised premises into a store and workshop. In my view, letter dt. 16.8.1971 Exh. D-4, does not give any indication that the building was let out to the respondents for using it as a store and workshop. From a combined reading of letters dated 16.8.1971 (Exh.D-4), 1.7.1971 (Exh.D-3), 26.5.1971 (Exh.D-2) and letter dated 19.8.1983 from the Director, Information and Public Relations, Punjab, to the petitioner wherein the department had informed the petitioner that department is trying to hire another suitable building and as soon as any suitable building is available, the office of Technical Officer, which is housed at present in this building, shall be shifted there and his house would be vacated, makes it abundantly clear that the building was let out for office use only and not for the purpose of a store and workshop. Not only these documents, but DW-2, B.L. Kapoor, Assistant in Public Relation Department, Punjab, while appearing as witness for the respondents, in his cross-examination admitted it to be correct that in the beginning the rented premises were used for office purpose only. It thus, stands established on record that the building was let out to the respondents for using it as an office. Admittedly, the respondents have been using the premises for the purpose of store and workshop which is a purpose other than the one for which the building was leased out. No consent in writing has been produced by the respondents to show that the petitioner had agreed to the change of user. Consequently, the

respondents who took the residential building for using it as an office have changed its user by running a workshop, besides using it as a store and thus, are liable to be ejected on the ground of change of user.

6. The other ground on which ejectment of the respondents has been sought is that they have impaired the value and utility of the building. The Apex Court in *Gurbachan Singh and another Vs. Shivalak Rubber Industries and others*, , while dealing with the provisions of Section 13(2)(iii) of the Act has observed that "the meaning of the expression" to impair materially" in common variance would mean to diminish in quality, strength or value substantially. In other words to make a thing or substance worse and deteriorate. The word "impair" cannot be said to have a fixed meaning. It is a relative term affording different meaning in different context the term "impair materially" has been used to mean, considerable decrease in quality which may be measured with reference to the antecedent state of thing as it existed earlier in point of time as compared to a later stage after the alleged change is made or affected suggesting impairment. Further the use of the word "value" means intrinsic worth of a thing. In other words utility of an object satisfying-directly or indirectly, the needs or desires of a person. Thus, the ground for eviction of a tenant would be available to a landlord against the tenant u/s 13(2)(iii) of the Act, it is established that the tenant has committed such acts as are likely to diminish the quality, strength or value of the building worth or fitness of the building or the rented land has considerably affected its use for some desirable practical purpose." It has also been observed by the Apex Court that impairment of a building has to be judged from the point of view of the landlord and not of the tenant or anyone else. In the instant case, the Authorities below have held that the landlord has failed to prove that the building has really suffered any substantial damage as claimed by him. They have opined that a minor damage has been caused to a building by an ordinary wear and tear which cannot entitle the petitioner to seek ejectment of the respondents. In my view, on the facts proved on record, the Authorities below have taken an erroneous view of the matter. In order to show as to how the respondents have impaired the value and utility of the building, the petitioner in his ejectment application averred as follows:-

"That the respondents have materially damaged the building and have converted part of the building and lawns into a motor vehicle workshop of the Department. The lawns have been converted into a junk yard, parking yard and workshop. Approximately 20-30 vans remain parked in the house, the vehicles are either disposable or are under repair or are parked after office hours. The respondents have also converted the house a store of wasteful material, lying therein are approximately 2000 chairs, 500 tyres, old racks, steel poles and other material. Opening workshop, parking of vehicles and conversion of building into a dump store has affected the building adversely.

That the main gate pillars and the gate itself have been broken down by reckless driving to facilitate the ingress and outgress buses and other vehicles. Mobil oil is

littered all over and look of verandah and rooms is repulsive, sanitary fittings, electrical fittings wooden doors window almirahs have been completely damaged."

Petitioner while giving the statement as PW-1 has stated that "the outer gates of the building have been uprooted, the second pillar of the gate has also been broken, the passage and the verandah have been broken out by the material, about two doors have been broken, window panes have also been broken, sanitary and electric fittings have also been completely damaged." Shri Anil Aggarwal, Advocate, who was appointed as Local Commissioner by the Rent Controller to inspect the spot, in his report dated 28.3.1984 found that in the lawn of front portion of the premises, as many as 11 motor vehicles were lying parked. In the lawn at the back-side of the premises, as many as 11 motor vehicles were lying parked. In the lawn at the back-side of the building, damaged and junked chairs approximately 1000 in number, steel racks and bodies of room-coolers were lying. In the back-side of the annexe, used tyres approximately 400 in number, steel trunks and wooden almirahs were lying. The back-side of the annexe was being used for workshop where mini-generators were being repaired. He found Mechanics repairing the generators which were 13 in number and also found mobil-oil filled in drums of 220 litres. He found pulley fixed to earth which was being used for engine repair purposes. On the back lawn, he found as many as 12 motor vehicles, and two-tonne gib crane parked there. He found a tool-room adjoining the workshop. The ramp leading to the roof was found being used for storing waste stationery, damaged mini generators, steel racks, exhibition boards and used tyres. Local Commissioner also found that on the right side of the verandah, a room where a workshop Incharge was present, there appeared to be a kitchen on the back-side of this room but the same was being used for storing new tyres and spare-parts by putting woodea racks on shelves, besides new Radios and speakers in steel and wooden almirahs. On the left side of verandah, he found a store for electrical equipments, i.e. light equipments, spot lights approximately 70/80 solar lights, unserviceable, and rolls of wire. He also noticed that W.C. bath attached to the room was being used for storage purposes. He found some wooden planks, exhibition-boards, 200 in number, and damaged druggets approximately 100 in number, lying on the left side of the premises. The front portion of the premises was found being used for recording purposes as he noticed sound equipments and projectors lying in a room. The only objection raised by counsel for the respondents to the report of the Local Commissioner is that the respondents were given no opportunity to assail the report or the manner in which the investigation had been carried out. In my view, this objection of counsel for the respondents is without any substance. Inspection by the Local Commissioner was made in the presence of the parties, but no objections whatsoever were filed by the respondents to the report of the Local Commissioner. Therefore, it is too late for the respondents to contend in this revision petition that respondents had no opportunity to assail the report of the Local Commissioner. Mr. Bhanot, counsel for the State, has not been able to

point out from the record as to how the report is not correct. The report of the Local Commissioner clearly indicates that the building is being used for the purpose of store/junk-yard and workshop. It is thus, distinctly clear from the pleadings and the statement of the petitioner as PW-1, statement of Local Commissioner Sh. Anil Aggarwal as PW-2 and his report dated 28.3.1984, that the respondents have demolished the outer gates of the building, broken the second pillar of the gate, besides breaking the two doors, window-panes of the building, broken the second pillar of the gate, besides breaking the two doors, window-panes and damaging the sanitary and electric fittings. It has also been proved that the building has been converted into a store of wasteful material and it is also being used as junk-yard and parking-yard. By committing these acts, respondents have not only materially impaired the value and utility of the premises, but have also exposed the petitioner to danger of his building being resumed by the Government. Vide order dated 3.9.1983 of the Estate Officer, Chandigarh, the building has been ordered to be resumed. Appeal preferred against the order of Estate Officer has been adjourned to await the decision of this revision petition. In similar circumstances, in AIR 1995 1160 (SC) , the Apex Court did not interfere with the ejectment order passed by the Rent Controller. In the case before the Apex Court, the building was leased out to the tenant for use as show-room-cum-office. However, the tenant without landlord's permission constructed a shed and put machines in the demised building. The construction put up by the tenant exposed the landlord to peril of resumption of land by the Government. The question whether the acts of tenant had materially impaired the value and utility of the building was considered insignificant and landlord was held entitled to an eviction order. Thus, having regard to the facts and circumstances discussed above, I am of the view that the petitioner has successfully proved on record that respondents have materially impaired the value and utility of the premises and are liable for eviction on this ground as well. As regards the objection of counsel for respondents that the findings recorded by the Authorities below should not be interfered with by this Court in revisional jurisdiction, it is only to be stated that the scope of Section 15(5) of the Act is not the same as the scope of Section 115 of Code of Civil Procedure. It is now well-settled that the scope u/s 15(5) of the Act is wider and is not confined to question of jurisdiction only. u/s 15(5) of the Act, the High Court has the jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the propriety or legality of the findings made by the Authorities in regard to the grounds of eviction. If the Rent Controller and the appellate Authority have failed to examine the facts by not correctly instructing themselves about the law, this Court in revisional jurisdiction would be justified in interfering with the decision.

7. Consequently, the revision petition succeeds and is hereby allowed with costs which are quantified at Rs. 2000/-. The judgments of the Authorities below are set aside. The application of petitioner for eviction of respondents is allowed. It is directed that petitioner shall be put in actual physical possession of the demised

premises after evicting the respondents therefrom.

8. Considering that the respondents are running a workshop and store in the demised premises and it may not be possible for them to immediately vacate the premises, therefore, in the interest of justice, the respondents are allowed three months' time to vacate the premises provided they deposit the entire arrears of rent, including that of three months, within one month from today and also file an undertaking with the court of Rent Controller that they shall hand over the vacant possession of the premises to the petitioner-landlord on or before the expiry of period allowed by this Court. In case the entire arrears of rent are not deposited and undertaking in writing is not filed within one month, petitioner shall be entitled to apply to the Rent Controller for taking possession of the premises forthwith.