

(2007) 08 P&H CK 0059
In the Punjab And Haryana At Chandigarh

Fateh Chand

APPELLANT

Vs

Mahant Dwarka Dass Chela Mahant Karam Parkash,
Mohatmim Dera Smadh Baba Giani

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 15(5)

Citation : (2007) 4 PLR 435

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The tenant has filed this revision petition u/s 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") against the order of ejectment passed by the Additional District Judge, Patiala (exercising the powers of the Appellate Authority under the Act), whereby he has been ordered to be evicted from the demised shop on the ground that he has materially impaired the value and utility of the demised premises.

2. In this case, the shop in dispute was let out to the petitioner by the respondent-landlords in the year 1970 @ Rs. 160/- per month. In September, 1986, the respondent-landlords filed the ejectment application against the petitioner u/s 13 of the Act on two grounds, i.e., for non-payment of rent from 1.2.1985 till the date of filing of the ejectment application; and secondly that the tenant has materially impaired the value and utility of the demised premises. In this regard, it was alleged that the petitioner had affixed a rolling iron shutter in front of the shop in dispute after removing the wooden door and by raising pucca pillars. By the amended petitions, it was further alleged that the petitioner had closed a door of the shop by raising pucca wall in connivance with his brother, who was also a tenant in the adjoining shop. In the same wall, he had also opened a door at different place towards the open side of the back of the shop under tenancy of his brother Gulshan Kumar. The petitioner had also encroached

upon the open land and had raised construction of walls and roof with the help of CGI sheets. It was alleged that all these alterations were made by the petitioner without the consent of the landlords. It was further alleged that the petitioner had made structural additions and alterations in the shop in dispute which impaired its value and utility.

3. The petitioner contested the said ejectment application. The arrears of rent as claimed in the ejectment petition were tendered on the first date of hearing along with interest and costs. Thereafter, the said ground of ejectment did not survive.

4. Regarding the alleged material alteration and impairment of the value and utility of the denied shop, it was alleged that the petitioner did not affix any rolling iron shutter and raised pucca pillars in the demised shop. It was also denied that the petitioner had made any structural additions or alterations in the shop in dispute. It was alleged that the shop was in the same condition since long. Therefore, the landlords were estopped from raising such pleas. Regarding closing of the door, opening of a new door at a different place and encroaching upon the area of landlords, and raising construction thereon, it was stated that the petitioner did not make any such additions, alterations or constructions.

5. In support of his case, the respondent-landlord himself appeared as AW1 and also examined AW2 - Narinder Singh Bhatia, Consultant Engineer, AW3 - Vidya Sagar, Draftsman and AW4 - Ram Rakha. To rebut the evidence of the landlords, the petitioner examined himself as RW1 and also examined one N.S. Bhalla, Civil Engineer as RW2.

From the evidence on the record led by the parties as well as the site-plan and the report submitted by the Building Experts of both the parties, it was established that a rolling iron shutter was affixed in front of the demised shop after removing the wooden door already existing there. It was also established that while affixing the rolling iron shutter after removing the wooden door, the width of the demised shop was extended, and thereafter, the rolling iron shutter was affixed by raising the pucca pillars on both sides. It was further established that a door, which was opening towards the back of the adjoining shop on rent with the brother of the petitioner, was closed by constructing pucca wall. It was also established that the new door almost of the same size was opened in the vacant land. It was further established that after opening the new door in the same side wall, the petitioner had also encroached upon an area of 6" x 11" + 2.1/2" x 2.1/2" by raising construction of walls and roofing the same with the help of CGI sheets.

The aforesaid additions, alterations and constructions were made without the written consent of the landlords. Though the petitioner in his rely had totally denied the allegations regarding the aforesaid additions, alterations and constructions made by him, but during the course of evidence, he had tried to prove that the aforesaid rolling iron shutter was affixed in the demised shop by

Darshan Singh prior to 1983, who was collecting the rent from the petitioner on behalf of the respondent-landlords. Regarding other additions and alterations, it was stated by the petitioner that those additions and alterations, and constructions were also raised by Darshan Singh in the year 1969, but in the cross-examination, he had admitted that except affixing of the rolling iron shutter, Darshan Singh did not make any addition or alteration in the demised shop.

6. While relying upon the decision of the Supreme Court in *G. Arunachalam* (died) through L.Rs. and another Vs. *Thondarperienambi* and another, , the learned Rent Controller held that affixing of rolling iron shutter by raising pucca pillars does not amount to impairing the value and utility of the demised premises. Rather, such like alteration/construction increases the life and value of the building. Regarding the other additions, alterations and constructions, it was held that the closing of one door and opening of another door does not impair the value and utility of the building and the construction raised in the open space by raising walls and by putting CGI sheets, were only temporary constructions. Therefore, the same did not materially impair the value and utility of the building. Consequently, the Rent Controller dismissed the ejectment petition.

7. Aggrieved against the order of Rent Controller, the respondent-landlords filed an appeal before the Appellate Authority. The appeal has been allowed and the order of the Rent Controller was set aside and the petitioner has been ordered to be evicted from the demised shop on the ground that he has materially impaired the value and utility of the demised premises without the consent of the landlords. It has been held that the tenant has affixed the rolling iron shutter after removing the wooden door and after widening the door from 8" to 10", therefore, by making this alteration, petitioner has materially Impaired the value and utility of the demised shop. The Appellate Authority after taking into consideration the evidence, particularly the reports of both the Building Experts as well as the admission of the petitioner, has also come to the conclusion that a door at point "Y" in the site-plan was closed by raising the wall and a new door at point "DI" in report Ex. A2 was opened, and the area of the landlords has been encroached upon by constructing the walls and putting CGI sheets. It has been further held that those constructions are of permanent nature as has been so admitted by the petitioner himself in the cross-examination. Therefore, it was found that by making the aforesaid additions, alterations and constructions, the petitioner has also materially impaired the value and utility of the demised shop. Against the said order, the instant revision petition has been filed.

8. Shri J.R. Mittal, learned senior Counsel for the petitioner argued that the Appellate Authority has illegally and arbitrarily set aside the order of the Rent Controller whereby the ejectment application filed by the respondent-landlords was dismissed after duly considering all the evidence led by the parties. He submitted that after reversing the well reasoned finding of the Rent Controller, the Appellate Authority has wrongly come to the conclusions that the alleged

additions, alterations and constructions were made by the petitioner which have materially impaired the value and utility of the demised shop.

9. In order to assail the finding of the Appellate Authority, learned Counsel for the petitioner firstly argued that the landlords have simply pleaded the alleged additions and alterations, but they did not plead that those alterations and additions have materially impaired the value and utility of the demised shop. He submitted that get a tenant evicted from the demised premises u/s 13(2)(iii) of the Act, a landlord is required to plead two things, i.e., he has to give the details of the alleged additions, alterations or constructions; and secondly he has to plead that those additions, alterations or constructions have materially impaired the value and utility of the demised premises. He submitted that in the instant case the respondent-landlords have not pleaded the second ingredient, therefore, the impugned order of ejectment passed against the petitioner on the aforesaid ground is liable to be set aside. In support of his contention, learned Counsel relied upon a decision of this Court in *Pritam Singh (died) v. Kailash Chand* (1987) 92 P.L.R. 381 (P & H), wherein it has been held that if the landlord does not state the alleged alterations made by the tenant which impaired the value and utility of the premises, the ejectment application is liable to be dismissed.

10. I do not find any substance in this contention raised by the learned Counsel. In para 5 of the amended ejectment application, it has been stated that "the respondent (petitioner herein) has made structural additions and alterations in the shop in dispute and impaired the value and utility of the shop." In para 5 of the replication, it has been stated that "the respondent (petitioner herein) by doing wrongful acts has impaired the value and utility of the shop in dispute and has made structural additions alterations, which were done about three years back."

11. When confronted with the above portions of the ejectment application and replication, learned Counsel for the petitioner argued that the word "material" has not been pleaded in the ejectment application filed by the respondent-landlords. He submitted that it is not only to be pleaded but has to be proved by the landlords that the alleged additions, alterations or constructions have "materially" impaired the value and utility of the demised shop. Therefore, it should be taken that the necessary ingredient of Section 13 of the Act has not been pleaded by the respondent-landlords.

12. I do not find any force in this contention of the learned Counsel also. Clause (iii) of Sub-section (2) of Section 13 of the Act provides that if the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, the Rent Controller may make an order directing the tenant to put the landlord in possession of the building or rented land. If the Controller is not so satisfied, he shall make an order rejecting the application. Therefore, it is clear that if the tenant who committed such acts as are likely to impair materially the value or utility of the building, he is liable to be evicted. In this case, it has been proved by the evidence led by the respondent-landlords

and even from the evidence of the petitioner tenant that the petitioner has affixed a rolling iron shutter in front of the shop in dispute after removing the wooden door and by raising pucca pillars and widening the width of door of the shop. It has been also proved that the petitioner had closed a door of the shop by raising pucca wall in connivance with his brother, who was also a tenant in the adjoining shop. In the same wall, he had also opened a door at different place towards the open side of the back of the shop under tenancy of his brother. The petitioner had also encroached upon the open land and had raised construction of walls and roof with the help of CGI sheets. Therefore, the first part of the Clause (iii) of Sub-section (2) of Section 13 of the Act, i.e., impairment of the building due to acts committed by the petitioner, has been pleaded and proved by the respondent-landlords.

13. The second part of this Clause that such acts of the tenant have materially impaired the value and utility of the demised shop, can be inferred from the alleged additions, alterations and constructions raised by the tenant. Whether by making the alleged additions, alterations and constructions, the value and utility of the building has materially been impaired, is an inferential fact to be deduced from proved facts. In this regard, the reference can be made to the decision of the Supreme Court in *Vipin Kumar Vs. Roshan Lal Anand and Others*, , whereby raising a wall in the verandah and putting up the door in the wall was held to be materially effecting the value or utility of the shop. In that case, it was held by the Supreme Court as under:

...The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of Clause 3 of Sub-section (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb is of the utility or value of the building has been materially impaired. The acts of the tenant must be such that by erecting the wall had materially impaired the value or utility of the demised premises. It is contended by Mr. Prem Malhotra that the landlord should prove as to how it is materially effected and that there is no evidence adduced by the landlord. We find no force in the contention. By constructing the wall, whether the value or utility of the building has materially been impaired is an inferential fact to be deduced from proved facts. The proved facts are that the appellant without the consent of the landlord had constructed the wall and put up a door therein as found by the Rent Controller, the flow of air and light has been stopped. He removed the fixtures. From these facts it was inferred that the value or utility of the building has been materially effected.

14. Even the judgment cited by the learned Counsel for the petitioner in *Pritam Singh's* case (*supra*) does not support his case. In that judgment, it has been held that to get a tenant evicted u/s 13(2)(iii) of the Act, the landlord has to state that the alleged alterations made by the tenant have impaired the value and utility of the premises. In the instant case, the respondents have specifically pleaded and proved that the alleged additions and alterations have impaired the

value and utility of the demised shop.

15. Secondly, learned Counsel for the petitioner submitted that affixing, of the rolling iron shutter after removing the wooden door, does not amount to material alteration impairing the value and utility of the demised shop. In this regard, learned Counsel submitted that the Appellate Authority has totally ignored the version of the petitioner to the effect that the aforesaid rolling iron shutter was installed by Darshan Singh prior to 1983, who used to collect rent on behalf of the respondent-landlords. Learned Counsel submitted that in reply to the ejectment application, the petitioner had taken a definite stand that said Darshan Singh was collecting the rent from the petitioner, but in the replication the respondent-landlords denied the said fact. Learned Counsel further submitted that while appearing in the court as AW1, the respondent-landlord admitted in his statement that Darshan Singh was collecting the rent on his behalf for some years. Therefore, the stand taken by the petitioner during the course of his evidence that rolling iron shutter was affixed by Darshan Singh, should have been believed.

16. I do not find any substance in the aforesaid contention of the learned Counsel. The respondent-landlords have examined AW4 - Ram Rakha to prove that the aforesaid rolling iron shutter was installed by the petitioner through the said witness. The said witness in his statement has categorically stated that in the year 1985-86, he had installed the said rolling iron shutter on the asking of the petitioner. In cross-examination, he has specifically denied that the said iron shutter was affixed by Darshan Singh. The landlord had only admitted that on earlier occasion, Darshan Singh was collecting rent on his behalf but when the alleged rolling iron shutter was installed, he was not collecting the rent. Therefore, in my opinion, the Appellate Authority has recorded a finding of fact that the rolling iron shutter was installed by the petitioner after removing the wooden door, as a result of which the width gate of the demised shop was extended, and thereafter, the rolling iron shutter was affixed by raising the pucca pillars on both sides.

17. Now the question arises is whether this act of the tenant amounts to material impairment. Learned Counsel for the petitioner relied upon the decision of the Supreme Court in G. Arunachalam's case (supra). In that case, the front door of wooden planks was replaced by rolling shutters. While replacing the rolling shutters, even the wooden frames were not removed. For fixing the rolling shutters, only the front portion of the floor was lowered. In these facts, it was held by the Supreme Court that such replacement of wooden planks by rolling shutters does not materially impaired the value and utility of the building. But, in the instant case, it is not mere fixing rolling iron shutter on the wooden door. Here, the wooden door has been removed. The length and width of the door has been widened. Some portion of the wall has been demolished and then two pucca pillars were constructed, and thereafter, the rolling iron shutter was affixed. In the instant case, by widening the door after removing the wooden

door and raising the pillars, the tenant has certainly materially impaired the value and utility of the demised shop. By widening the gate, the structural change in the shop has been made. Therefore, the said decision of the Supreme Court will not be applicable in the facts and circumstances of the case.

18. Thirdly, learned Counsel for the petitioner submitted that by closing the door in the wall and by opening a new door in the same wall, and thereafter, raising construction and putting up CGI sheets on the open space do not amount to material impairment of the value and utility of the demised shop because these additions, alterations and constructions are of temporary nature.

19. I do not find any substance in this contention of the learned Counsel. In view of the site-plan, which has been placed on record by both the Experts, and the statement of the petitioner himself, where he had admitted that the construction is of permanent nature, no different view can be taken from the view taken by the Appellate Authority. These additions, alterations and constructions have been rightly held to be of permanent nature materially impairing the value and utility of the demised shop.

20. Though in reply to the ejectment application, the petitioner has totally denied of having made any alteration or raised the aforesaid construction, but during the course of his cross-examination, he had admitted that these additions and alterations were made by Darshan Singh in the year 1969 after getting sanction from the Municipal Committee. On the other hand, in his cross-examination, he has admitted that except affixing the rolling iron shutter, the other constructions were not made by Darshan Singh. It has been proved on record and has been rightly held by the Appellate Authority that these constructions were made by the petitioner without the written consent of the landlord.

21. In the last, learned Counsel for the petitioner argued that the respondent-landlords accepted the rent from the petitioner after making of the alleged additions, alterations and construction. Therefore, on the principle of acquiescence and waiver, it should be presumed that the landlord has waived his right of ejectment on the ground that the tenant has materially impaired the value and utility of the demised shop. In support of his contention, learned Counsel for the petitioner relied upon a Division Bench decision of this Court in *Ved Parkash v. Darshan Lal Jain* (1986) 90 P.L.R. 90.

22. I do not find any force in this contention of the learned Counsel also. In the said case, the ejectment application was filed after 16 years of the alleged removal of the wall. In that situation, it was held that the landlord has waived his right to get the tenant evicted on the ground of material impairment. But in the instant case, as per the evidence available on the record, the alleged constructions were raised in between the years 1983 to 1985 and the ejectment application was filed in the year 1986. In such situation, merely by accepting the rent up to 31.1.1985 does not disentitle the respondent-landlords to get his tenant evicted on the aforesaid ground. In *Victor Industries and Others Vs.*

Banarasi Lal, , this Court has held that the landlord cannot be considered to have waived off or acquiesced in the material alteration of the rented premises merely because he has accepted rent after such alterations.

23. In view of the aforesaid discussion, I do not find any illegality or perversity in the findings recorded by the Appellate Authority. It is well settled that in exercise of re-visional jurisdiction, this Court is not required to interfere in the findings of fact recorded by the courts below until the findings recorded are perverse or unreasonable. Hence, this petition fails and the same is hereby dismissed.