
(1993) 11 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 205 of 1988

Har Parshad Shobha Ram through Baij Nath	APPELLANT
Vs	
Shri Om Parkash and Others	RESPONDENT

Date of Decision : 12-11-1993

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 13(2), 14, 14(2), 2, 24(5)

Citation : (1994) 1 ShimLC 244

Hon'ble Judges : Bhawani Singh, Acting C.J.

Bench : Single Bench

Advocate : D.D. Sood and Bhupinder Gupta, for the Appellant; A.K. Goel and G.C. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, A.C.J.

1. This revision u/s 24(5) of the Himachal Pradesh Urban Rent Control Act, 1987 (hereafter "the Act") has been preferred by the tenant against the judgment of Appellate Authority (1), Shimla, in C.M.A. No. 171-S/14 of 1988/141-S/14 of 1987/109-S/14 of 1985, dated 29-9-1988, whereby the appeal of the landlords has been accepted against the judgment of Rent Controller, Shimla, in case No. 94/2 of 1981, dated 27-3-1985, rejecting the eviction application of the landlords against the tenant. The appellate authority has directed the tenant to deliver the vacant possession of the premises to the landlords within three months.

2. The landlords moved an application for the eviction of the tenant u/s 14 of the Act on the ground that the tenant was in arrears of rent from 1-1-1980 to 31-10-1981 (Rs. 3,564 at the rate of Rs. 162 per month-Rs. 150 and Rs. 12 per month taxes at the rate of 8%) and was liable to pay statutory interest on this amount and costs that may be assessed as also claimed and that the premises had been taken on rent for being used solely for commercial purposes (Non-residential). However, the tenant changed the user of a part of the same without

the prior written permission of the landlords by converting a portion into his residence and that he had made unauthorised additions and alterations by improvised chala in the back portion, broke the wall, making unauthorised out-let for the water of the chala, thereby materially impairing the utility of the premises leading to seepage into the premises below it.

3. This petition has been resisted by the tenant. He has denied the change of user of any part of the premises in any manner. He has said that the rear portion of the shop has not been converted into residence and no member of his family was living there. According to him, he has his residence at Combermere on the Mall and also in a building at Cart Road, Shimla. The allegation about the construction of a chala and seepage of water has also been denied. He has explained that Panwari shop is being run in the premises from the beginning and the water outlet existed there ever since the construction of the shop. As to the payment of arrears of rent, he has stated that the same had been paid in the Court and there remained no dispute on this question between the parties. By way of preliminary objection, it has been stated that the petition has been filed with a mala fide intention to enhance the rent etc.

4. On the pleadings of the parties, the following issues were framed:

1. Whether the Respondent has changed the user of the demised premises for the purpose other than for which it was let out? OPP

2. Whether the Respondent has materially impaired the utility and value of the premises by making unauthorised alterations and additions without the consent of the landlord? OPP

3. Whether the petition is mala fide? OPR

4. Whether the petition is bad for non-joinder of the necessary parties? OPR

5. Whether the legal notice has been served upon the Respondent before the filing of the present petition? If so, to what effect? OPR

6. Relief.

5. The parties led their evidence before the Rent Controller and by decision of March 27, 1985, the petition was dismissed. Since issues Nos. 3, 4 and 5 were neither pressed nor there being evidence in support thereof, they were decided against the tenant. They were not agitated before the appellate authority nor in this Court during the course of submissions by the learned Counsel for the parties. On the key issues, the Rent Controller, after discussing the material evidence in the case, came to the conclusion that the landlords had failed to establish that the tenant or any other member of his family had actually resided in the shop in dispute or that the shop was being used for non-residential purpose. Alternatively, the Rent Controller also examined the question assuming that the tenant or his wife resided in the back portion of the shop for sometime occasionally, that would not fall within the mischief of Section 14(2)(b) of the Act

since the primary purpose for which the shop had been let out by the landlords was still existing and the tenant had not changed the user of the building from non-residential to residential. Finding on issue No. 2 was also examined quite elaborately with reference to the available evidence and it was held that the landlords had failed to prove that chala and water out let had been constructed by the tenant and on account of the water seepage, the lower portion of the building was being materially affected.

6. The landlords took the matter to the appellate authority where only two questions, namely, change of user of the demised premises for the purpose other than for which the same were let-out and material impairment, utility and value of the premises by making unauthorised additions and alterations, fell for consideration. The appellate authority, by the impugned decision, accepted the claim of the landlords on the first question but confirmed the findings of the Rent Controller on the second question. Before me, the learned Counsel for the parties concentrated their submissions only on the first question falling under issue No. 1.

7. Shri D.D. Sood, learned Counsel for the Petitioner-tenant, strongly contended that the appellate authority has arrived at absolutely wrong finding on this issue as a result of completely erroneous approach to the evidence on record. Material evidence, touching this question, has not been seen before recording finding against the tenant, otherwise it has been rightly held by the Rent Controller that the landlords have miserably failed to establish the case against the tenant in accordance with law. In order to appreciate the submissions, it is important to refer to the relevant statutory provisions here. Both the sides agree that the premises were let out for non-residential purpose.

8. Section 2(e) of the Act (Act No. 25 of 1987), defines "nonresidential building" as under:

non-residential building" means a building being used-

- (i) Mainly for the purpose of business or trade; or
- (ii) partly for the purpose of business or trade and partly for the purpose of residence, subject to the condition that the person who carried on business or trade in the building resides therein:

Provided that if a building is let out for residential purpose, separately to more than one person, the portion thereof let out for the purpose of residence shall not be treated as non-residential building.

Explanation - Where a building is used mainly for the purpose of business or trade, it shall be deemed to be a non-residential building even though a small portion thereof is used for the purpose of residence;

This definition is the result of amendment, otherwise under the old Act of 1971, "non-residential building" was defined as under:

Where a building is used mainly for the purpose of business or trade, it shall be deemed to be non-residential.

Section 14(2)(ii)(b) of the Act reads as under:

(2)(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

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

9. According to the landlords, the premises measure 8"X 12-1/2" but the tenant has stated that the same is 8"x 10"x 9". The learned Counsel for the parties have admitted that 9" is the height of the premises.

10. In order to substantiate the plea of change of user by the tenant, the landlords have produced certain witnesses and documents. They may be noticed here.

11. Shri Karam Chand (PW 1) has stated that the shop was rented to the tenant for carrying on panbeedi business (Ex. P-1). The tenant had started using the same as shop as well as residence for Salig Ram and his wife. They were cooking food there and a chala had also been constructed there and its out-let is connected through a pipe leading to seepage in the walis below. When the Local Commissioner went inside the shop, Salig Ram was there. He was questioned. He is carrying on a ration depot and the tenant has also a ration card for five persons. He did not see any other person living in the premises except Salig Ram and his wife. The tenant has created the back portion by partition and the construction of a chala came to light when it was being made, but he could not say about the date and month of the same. He came to know when the out-let was created. He did not see anyone preparing food inside but saw Salig Ram taking food. Salig Ram had brought his wife 5-7 months back and she had left. He did not know that the tenant had residence in building No. 7, Cart Road, Shimla. He admits that one of the brothers of Baij Nath had a residence in Combermere Salig Ram is the son of Baij Nath. He did not know that Baij Nath had ration card of seven members of Cart Road address and the name of Salig Ram is included in that. He has denied that the food of Salig Ram used to come from Cart Road residence,

12. Shri Suresh Bhardwaj (PW 2) was appointed Local Commissioner by the Court soon after the filing of the petition for eviction. He visited the spot and filed his report (Ex. P-6). He has admitted that he did not record the statement of any person when he visited the spot nor he questioned anyone in the neighbourhood, He did not see any cot there. The back portion must be 8"X 6". Rolled up bedding was there in addition to some utensils like patilas, karchhi and stove. There were some wearing clothes but no angithi was found.

13. Shri Dhanpat Ram (PW 3) has not said anything substantial. Shri Laiq Ram, Sub-Inspector Food and Supplies (PW 4) has stated that the application, on the

basis of which the ration card of Shri Salig Ram was prepared, was not traceable. This card was registered at the address of Chanakaya Hotel, Lakkar Bazar, Shimla. He did not go to the spot to verify the correctness of the card.

14. Shri Roshan Lal has stated that the residence of Baij Nath is on the Cart Road. He did not know whether food was being cooked there nor he knew that the wife of Salig Ram used to bring food from Cart Road. Shri Dev Raj has stated that he had seen Salig Ram living along with his wife in the disputed premises for sometime, though his residence may be at Cart Road. During day time, Salig Ram and his wife used to prepare food inside the shop but he did not go inside the shop since it could be seen from outside.

15. There is a judgment (Ex.PW 7/A) in a case filed by Shri Baij Nath, Karta of the tenant's family, in a petition for ejectment against his tenant on bona fide requirement wherein it has been stated by Shri Baij Nath and his brother Jagan Nath that one of their family members was residing in a part of his pan shop in Lakkar Bazar, the dimension of which was not more than 8"X 6".

16. Shri Baij Nath (RW 1) has stated that the disputed premises were with him from before 1912 with permission to use its back portion US residence. Some part of it was taken back by the landlords. He had a residential building at Cart Road, Shimla. The wife of Shri Salig Ram lived with them at the Cart Road, Shimla, The back portion of the shop is being used as a store and not for residence.

17. Shri Pratap Chand (RW 2) his stated that the ration card was registered with his depot since 1979. Shri Surinder Kumar (RW 3) has denied that the tenant was living in the premises in dispute. He did not see his wife there. He had seen the tenant taking his food there. It used to come from his Cart Road residence.

18. Shri Darshan Singh (RW 4) has his residence near the disputed premises. He has also denied that the tenant was living there. Similar is the statement of Shri Charanjit Singh (RW 5) and Siri Ram (RW 6).

19. Shri Salig Ram (RW 8) has stated that he signed the ration card which had been prepared by the Manager of the Hotel of the landlords who had told him that by doing so, the tenant would be in a position to procure the gas connection. He simply signed the form. Five persons cannot live in the premises. His food was coming from Cart Road through his brother or his brother's wife. For sometime, his own wife had been bringing it. Stove and hot plate had been kept in the shop. Chala was existing in the premises from before and was being used for washing utensils and betel leaves. During the course of his cross-examination, he has stated that his ration card was not with him. It was with Karam Chand (PW 1) It was never taken from him. He has denied that on account of the chala and water coming from it, the same was damaging the lower portion of the premises. He has denied that since 1979 he was living in the shop in question with his wife. He has been supported by Shri Gopal Dass (RW 9), Shri Harish Sethi (RW 11) and Shri V.K. Sahasrabudhe (RW 12).

20. From the evidence, it is clear that the shop was let out for the purpose of running a panwari shop. It is still being carried on. What was the exact extent of the shop in the beginning has not been established. The landlords claim that the tenant has started using the back portion as a residence and he was living there with his wife and food was also being prepared there. The landlords have attempted to prove that there are certain utensils in this portion of the shop in addition to bedding and some clothes, therefore, it is clear that the tenant is living there with his wife. The evidence is totally undependable and feeble. The utensils found there were not as many as are normally required by a family. The stove and a few utensils can be required for carrying on the business activities and the tenant has stated that since his stay at the shop was too long, therefore, he warms the food brought to him from his Cart Road residence. There is no dispute that other members of the family had residences at Cart Road and at Combermere building. In these circumstances, it cannot be said that the tenant is living in the premises alone or with his family. The reference to judgment (Ex.PW 7/A) does not improve the case of the landlords, as noticed by the Rent Controller since the statements recorded in this judgment may have reference to the premises in occupation of the tenant prior to the allotment of the present premises. The evidence discloses that before occupying the present premises, the tenant was occupying premises, at the same place and those premises were bigger in dimensions. The reasons recorded by the Appellate Authority on this aspect are, therefore, totally inappropriate since the evidence has not properly been analysed and appreciated.

21. There is another facet of this question. Assuming that Salig Ram is living there alone or with his wife. Can it be said that there is change of user within the meaning of Section 14(2)(ii)(b) of the Act? This provision has been subject-matter of interpretation in 1992 (2) SLJ 1495, Himachal Road Transport Corporation, Shimla v. M/s. Bhannoo Mull and Sons. It is relevant to quote paras 30 to 32 of this judgment:

30. We have extracted the definition of "non-residential building" that existed before the Rent Control Act, 1978 and thereafter. Under the old definition, the emphasis was that such a building was to be used solely for the purpose of business or trade. However, by the proviso to the definition, residence in such a building only for the purpose of guarding it, was not to convert it into a residential building. Despite the fact that the definition of non-residential building remains unchanged under the Punjab Act, however, while interpreting Section 13(2)(ii)(b) of the Act, the Courts had been moving on the principle that minor, non-substantial change in user and ancillary or subsidiary nature of change in business would neither attract the provisions of Section 13(2)(ii)(b) of the Act nor convert a "non-residential building" to a "residential building". The scope of this provision has further been broadened by the Apex Court in numerous decisions some of which have already been referred in the preceding part of this judgment, and in *Gurdial Batra Vs. Raj Kumar Jain*, Justice Ranga Nath Misra, as his Lordship then was, has gone to the extent of bringing in the concept of

"injury to the premises" as a result of alleged change of user of the premises in question, meaning thereby, an additional factor, though separately provided as separate ground of eviction could be used profitably to see whether the change caused to the premises is of such nature which would amount to an act of destruction or permanent injury to the leased property.

31. Coming now to Rent Control Act, 1971, we have the same definition of non-residential building as it existed in Punjab Act, but realising the obvious flaws therein, the legislature substituted it by the Rent Control Act, 1978. This definition continues under the Rent Control Act, 1987 which has been made applicable from 17th November, 1971. Reference to the Statements of Objects and Reasons, reproduced above, would clearly show that the pending cases were intended to be decided in accordance with the new definition. We proceed to examine the further contention of the learned Counsel for the parties as to the application of either of the two parts of this definition to "non-residential building". Shri D.K. Khanna submits that it is Section 2(d)(ii) which governs the present case, whereas Shri L.C. Sood, submits that although by the change in question the nature of building still remains "non-residential building", however, the act, of the tenant has come directly within the mischief of Section 14(2)(ii) (b) of the Rent Control Act. Alternatively, the learned Counsel submits that it is Section 2(d)(i) which applies in this case and while saying so, the learned Counsel submits that "mainly" should be interpreted as "solely" which expression existed prior to 1978 amendment.

32. We have carefully examined these submissions of the learned Counsel for the parties. We are of the considered opinion that it is Section 2(d)(ii) which is applicable in the present case. The premises in dispute were used partly for the purpose of business or trade and partly for the purpose of residence since as per the evidence, the Divisional Manager resided there for about two years. In addition, two more officials of the department, as per the solitary statement of Shri Surjit Singh PW 2), Divisional Manager who appeared on behalf of the Respondent, resided there. Now, the question is whether "mainly" should be interpreted as "solely" as contended by Shri L.C. Sood. No such interpretation can be given for the reason that these two expressions have altogether different meanings. "Solely" means "exclusively" while "mainly" means "substantially", but not in any case "wholly" or "solely". Therefore, the legislature has consciously and purposely substituted "mainly" for "solely". This argument has thus no force and is rejected. Going over to the explanation attached with this part, it has been explained that in case a building is mainly used for the purpose of business or trade, it shall be deemed to be non-residential building even though a small portion thereof is used for the purpose of residence. The words "small portion" has to be read with reference to "mainly" and then in the context of evidence that has been placed before the Court. The finding of the Courts below is that the groundfloor, as a whole, has been converted into residence of the Divisional Manager, which means that substantial portion of the building has been put to use for purpose different from the one for which the same had been

let out. We have examined this finding with reference to the evidence on record. We are of the considered opinion that this finding deserves to be set aside since there is no evidence in support for such a conclusion rather the evidence clearly demonstrates that the premises which were put to use as a residence from small part of the whole building See *Rai Chand Jain Vs. Miss Chandra Kanta Khosla*, at pages 430-431 (of SCC): The first document on the record is the registered notice dated 20-8-1973 (Ex. P-2), issued by the Respondent through his lawyer to the Respondent (sic), but it has not been mentioned as to how which accommodation had been put to residential use by the Divisional Manager. Then, there is the eviction application wherein there is again complete absence of precise detail as to the extent of occupation. In the rejoinder it is asserted that portions of the building were used for residence of the Divisional Manager and some of his office staff and thus used for a purpose other than that for which it was originally let out.

22. The apex Court has held in *Sant Ram Vs. Rajinder Lal and Others*, para 10 at p. 1604 as under:

10. The irresistible inference, despite the ingenious argument to the contrary, is that the provision of Section 13(2)(ii)(b) has not been attracted. We are comforted in the thought that our conclusion is a realistic one, as is apparent from a subsequent amendment to the definition of non-residential building which reads thus;

(...it is already quoted in the preceding part of this judgment).

23. If we look at the legislative history of rent legislation, we notice gradual change in various Acts in the State. The attempt of the Legislature has always been to protect the tenant against the invidious evictions at the hands of the landlords. With this end in view, the definition of "non-residential building" was amended after 1971 Act and the necessity for this amendment has clearly been spelt out in the Statement of Objects And Reasons with the Bill: It reads:

As per existing definition of non-residential buildings given in the Himachal Pradesh Urban Rent Control Act, 1971, the landlords are getting the building vacated, which are being used partly for residence and partly for business, as the definition of non-residential building clearly says that it means a building being used solely for the purpose of business or trade. In our towns buildings are mostly shop-cum-flats so under the garb of this clause, tenants are facing eviction. It is, therefore, proposed that the Himachal Pradesh Urban Rent Control Act, 1971, be amended to include suitable provision by replacing the existing definition/provision, so that the eviction, on the score that the building is being used partly for residence and partly for business cannot be effected. In view of the fact that a good number of petitions for the eviction of tenants from such commercial premises are pending before the Courts, as such it has also been decided to make the provision in the said Act, so that the pending matters could also be disposed of in accordance with the amended provisions.

This Bill seeks to achieve the aforesaid objects.

The Simla 1978.

Daulat Ram Chauhan, Minister In-charge.

24. Therefore, before depriving the tenant of the premises in his occupation on the ground of change of user, it has to be clearly established by the landlord that the tenant has changed the user of the premises substantially, i.e., the dominant purpose of letting out should be lost. The relevant provisions of the law have to be construed broadly without resorting to hypertechnical approach. In Smt. Priya Bala Ghosh and others Vs. Bajranglal Singhanian and another, . the apex Court said that:

...The law has to be broadly construed because it is not intended to trap the tenant into a situation so that the landlord can evict him. We are afraid that the High Court construed the relevant provisions of the law in a rather hypertechnical manner without keeping in mind the fact that Rent Restriction Legislations were enacted to protect the tenants from eviction by not-too-co-operative landlords.

25. The view of the Appellate Authority that the tenant should have specifically stated that he was using only a small portion of the shop for residential purpose instead of taking the plea of total denial, is clearly unsustainable. The burden to prove issue No. 1 was on the landlords. They should have proved it satisfactorily because the tenant could be called upon to rebut the same. It has already been recorded that the landlords have failed to prove their case against the tenant. However, the tenant has clearly explained that small utensils and stove kept in the premises were for warming the food brought from the residence situate far away, for lunch and dinner since the business is carried on right from 7 a.m. till late at night. This spells out the nature and extent of use of the premises by the tenant. Both the Courts below have rightly rejected the evidence of ration card in this case.

26. No other point was argued by the learned Counsel for the parties.

27. The result of the aforesaid discussion is that this petition is allowed. The judgment of the Appellate Authority (I), Shimla, is set- aside and that of the Rent Controller confirmed. The eviction petition preferred by the landlords is dismissed leaving the parties to bear their own costs.