

(1992) 08 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1985 of 1991 and C.M. No's. 4471-CII and 4682-CII of 1991

Jita Ram and Others

APPELLANT

Vs

Sham Lal and Others

RESPONDENT

Date of Decision : 31-08-1992

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 12, 13(3), 13(4), 15(5)
Evidence Act, 1872 — Section 92

Citation : (1993) 103 PLR 291 : (1992) 2 RCR(Rent) 687

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : Amarjit Markan and Dinesh Goyal, for the Appellant; Vinod Sharma and Balwinder Singh, for the Respondent

Judgement

N.K. Kapoor, J.—This is tenants revision petition against the order of the lower appellate Authority whereby the appeal filed against the order of the Rent Controller ordering eviction of the petitioners has been upheld ordering.

2. Briefly put, the landlord filed an eviction application on the ground of (i) non-payment of arrears of rent; (ii) respondents No 1 and 2 having sublet the shop in dispute in favour of respondent No 3 ; (iii) that the respondents demolished the walls of the shop as well as the roof; and (iv) that the shop in dispute has become unsafe and unfit for human habitation.

3. Respondents No. 1 and 2 put in appearance, filed written statement and controverted the various averments made in the application. It was specifically pleaded that the rented premises consists of two shops and not one. According to the respondents, the rate of rent of one shop was Rs. 45/- per . month whereas of the other shop it was Rs 30/- per month. The respondents further denied they have sub let the shop to respondent No. 3 Yash Pal The respondents, however, admitted that wooden planks of the shop which were towards the post office were eaten by white ants and condition of the roof was known to the

landlord the for last two years The respondents, however, admitted that suit for permanent "injunction ffiled by the landlord, against the respondents was decided in favour of the landlord vide judgment and decree dated 6.6.1986 It was also admitted that the roof of the back portion of the shop had fallen during the rainy season.

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

(1) Whether the petition made on 8.8.1986 was valid ? OPA.

(2) Whether respondents No. 1 and 2 have sub-let the demised premises in favour of respondent No. 3 and delivered him the possession as alleged ? OPA.

(3) Whether the demised premises are unfit and unsafe for human habitation ? OPA.

(4) Whether the respondents have impaired the value and utility of the demised premises if so, its effect ? OPA.

(5) Whether the demised premises consisted of two sets as alleged by the respondents, if so to what effect ? OPA.

(6) Relief.

5. Issue No 1 was decided in favour of the landlord, issue No. 2 was decided against the landlord holding that there is no proof on record to suggest that the shop in dispute has been sub-let by respondents 1 and 2 in favour of respondent No. 3. Under issue No. 3 the Rent Controller came to the conclusion that the shop in dispute had become unfit and unsafe for human habitation. Under issue No. 4, the Rent Controller on the basis of evidence on record came to a firm finding that the shop is, in fact, a single unit. Accordingly, the Rent Controller observed that in view of the specific assertion of the respondents that the shop consists of two units, it clearly proves that the respondents have converted one shop into two portions by raising a wall in between. This way the respondents have impaired the value and utility of the shop in dispute and thus are liable to be ejected. Under issue No. 5, it was held that the shop is a single unit. Resultantly, the order of eviction was passed against the respondents.

6. The appellate authority once again examined the whole matter on facts as well as on law. The bone of contention between the parties revolved round two material issues as to whether the shop in question is unfit and unsafe for human habitation and whether the respondents are guilty of impairing the value and utility of the shop who are alleged to have raised a wall thereby dividing the shop in two portions.

7. The lower appellate authority on perusal of evidence came to the same conclusion as that of the Rent Controller that the shop in question is unfit and unsafe for human habitation and that the shop is one unit and the fact that the same is divided into two parts would tantamount to materially impairing the value and utility of the shop in dispute and so affirmed the order of the Rent

Controller.

8. Before me, learned counsel for the petitioners has assailed the conclusion of the authorities below on the ground that the same is unsupportable as per evidence on record. The first submission of the learned counsel is that admittedly two separate rent notes were executed by the present petitioners in favour of the landlord. The rent note Exhibit P- 1 dated 31.3.1973 was for the period i. e. 1.4.1973 to 31.3.1974 whereby Jeeta Ram was inducted as a tenant at monthly rent of Rs. 30/-. The other rent note Exhibit P-2 dated 31-7-1973 is in favour of Jeeta Ram and Fatch Chand whereby the shop was let out at monthly rent of Rs. 45/- or say Rs. 540/- per annum. According to the counsel, both these rent notes clearly belie the stand of the landlord that the shop is a single unit. Not only this, the first rent note is in favour of Jeeta Ram whereas the second is in favour of Jeeta Ram and Fateh Chand. Accordingly, on the basis of these two rent notes the conclusion of the authorities that the shop is one unit is, indeed, unsustainable. Since the authorities have erred in not properly perusing the above mentioned rent notes, the conclusion arrived at is per se perverse and the revisional Court can certainly interfere and upset this perverse finding. The acceptance of this contention of the petitioners would clearly knock out the stand of the respondents that the petitioners have raised a wall thereby dividing the shop and are so guilty of materially impairing the value and utility of the shop. The counsel next contended that no expert had been examined by the landlord in support of his contention that the building has become unsafe and unfit for human habitation. The solitary witness examined Ajmer Singh, AW 3, is merely a draftsman. He could hardly be attributed any knowledge as to the nature of construction, its life etc. As regards roof of the shop having fallen, the same was admitted but all the same it was contended that it was only the back portion of the shop and has, in fact, been reconstructed by the petitioners Even it be taken that part of the tenanted premises had fallen (rear portion), this itself is no ground to order eviction in view of the various judgments of this Court as well as the Apex Court. The counsel in support of his contention relied upon the judgment in case reported as *Piara Lal v. Kewal Krishan Chopra* 1988 RL. R. 32. *Harnek Singh v. Bir Singh* (1989) 96 P. L. R. 191. *Dharminder Nath and Ors. v. Udham Singh Shopkeeper Machhi Bazar, Kapurthala* 1989 95 P. L. R. 336. *Shadi Singh Vs. Rakha*, . On the other hand, learned counsel for the respondents submits that both the Courts after appreciating evidence on record has returned a finding holding that the building has become unfit and unsafe for human habitation as well as that the tenants have materially impaired the value and utility of the shop by raising a wall and these being finding of fact are not amenable to revisional jurisdiction of this Court. The impugned orders cannot be termed as illegal or, perverse.

9. I have carefully considered all the submissions made by the learned counsel for the parties and have perused the relevant documentary evidence on record Before going into the various contentious issues raised by the parties, it will be appropriate to deal with the primary objection raised by the counsel for the

respondents that in view of the concurrent decision of the Courts below, the revisional Court has got no right to interfere in such findings. Section 15(5) of the Act deals with revisional power of this Court under the Act. As per this provision, the High Court can call and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality of propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. Thus, it is manifest that scope of interference in the revision petition u/s 15(5) of the Act is not confined to the question of jurisdiction only. On the other hand, as and when it has been brought to its notice that there has been misappreciation of evidence or omission to consider the relevant facts, the revisional jurisdiction of the High Court has been invoked. Examined thus, it cannot be said that the High Court in no case can interfere in the concurrent findings of the Courts below even if these appear to be palpably illegal or improper. The scope of revision petition u/s 15(5) of the Act is wider than conferred by Section 115 of the Code of Civil Procedure. The revisional power of the High Court is, in fact, in the nature of power of superintendence and is normally exercised when the impugned order appears to be perverse or improper. Salient facts which have been highlighted by the counsel for the petitioners, which, according to him, were ignored by the Rent Controller as well as the Appellate Authority, needs somewhat close scrutiny so as to arrive at a conclusion whether, in fact, the alleged material evidence had been not taken into consideration while holding the petitioners guilty of impairing the value and utility of the shop or even the admitted statement of the witnesses examined by the landlord, it could be concluded that the building had become unfit and unsafe for human habitation. Taking up firstly the evidence with regard to the material impairment of the value and utility of the shop, the case set up by the respondents is that the petitioners are guilty of converting one shop into two and for this reliance has been placed upon the rent notes Exhibit P-1 and P-2. According to the respondents, if we go by the description and boundaries given in the two rent notes, there is no ambiguity left that both these rent notes, in fact, relate to one shop.

10. These rent notes too have been pressed by the respondents in support of their contention that two separate tenancies were created at different time by these rent notes i.e. Exhibit P-1 dated 31.3.1973 and Exhibit P-2 dated 31.7.1973. Exhibit P-1 is in favour of Jeeta Ram petitioner, whereas Exhibit P-2 gives the names of lessee as Jeeta Ram and Fateh Chand. Thus, according to the learned counsel for the respondents, the so called raising of wall by the petitioners is a made up story. In fact, the wall dividing the two portions existed at the time of the inception of tenancy vide Exhibit P 1, Unfortunately, neither the Rent Controller nor the appellate authority have closely examined the aspect of the matter. The sole point which weighed with the Rent Controller is that in the Rent Notes the shop was specifically mentioned as a single unit and so returned the finding that the respondents have converted one shop into two portions by raising a wall in between and this way have impaired the value and utility of the

shop in dispute. Similarly., the appellate authority after referring to two separate rent notes observed as under :-

"..... but from the perusal of the rent note it is specifically mentioned that the shop in question is a single unit. Hence, it is proved that the respondents have converted one shop into two portions by raising a wall which have definitely impaired the utility and value of the shop in question."

11. This conclusion of the authorities below is unsupportable on the basis of rent notes Exhibit P-1 and P-2. Both the authorities have simply glossed over the fact that vide real note Exhibit P-1, Jeeta Ram alone was inducted as a tenant at a monthly rent of Rs. 30/-. This rent note is for the period from 1.4.1973 to 31.3.1974. Exhibit P-2 is in favour of Jeeta Ram and Fateh Chand at yearly rent of Rs. 540/-. On perusal of both the rent notes, it is quite clear "hat it is nowhere mentioned that the shop earlier let out to Jeeta .Rani is now being given to Jeeta Kant and Fateh Chand. Had this been the case, the later rent note Exhibit P-2 would have clearly mention-J that hence onwards both of them, namely, Jeeta Kara and Fateh Chand would be tenants of the shop and the rent payable will be Rs. 75/- per month. Not only this, there is not an iota of evidence on the record by which it could be inferred that the dividing wall was raised by the petitioners. If we go by the tenor of both the rent notes, it is more plausible that the respondents had, in fact, converted one shop into two parts and had let out, the first by rent note Exhibit P-1 and second by rent note Exhibit P-2, Except for the bald assertion of the petitioner, there is no independent evidence on record to prove that the shop was divided into two parts by the petitioners. Even if we assume for the sake of argument that there is ambiguity in the rent notes Exhibit P-1 and P-2, the conduct of the parties can be relevant to know the real terms of agreement notes Exhibit P-1 and P-2. u/s 92 proviso 6 of the Evidence Act, if a document is obscurely framed or if any of its clauses contains a real ambiguity, evidence of the conduct of the parties is admissible to construe the document and even if the intention of the party cannot be determined from the terms of the document with absolute certainty, the conduct of the parties during the long course of years is a very material element for consideration. Examined thus, the first rent note is of 1973 and the second is also of 1973 whereas the petition for eviction on the ground of materially impairing the value and utility of the shop has been raised for the first time in the Year 1986. Viewed thus the finding of the Courts below with regard to this aspect i.e. whether the respondents are guilty of materially impairing the value and utility of the shop is unsustainable.

12. The next issue pertains to the shop having become unfit and unsafe for human habitation For this, applicant appeared as his own witness and examined one Teja Singh and Ajmer Singh in support of his contention. According to Sham Lal-landlord-wooden battans of the roof of the shop in question had been eaten up by the white ants and the roof of the shop in dispute had fallen down. According to him, the shop in dispute was not in a repairable condition and the same was to be reconstructed- Teja Singh AW2, deposed that verandha of the

shop in dispute was lying collapsed. Ajmar Singh, AW3, who, in fact, is a draftsman deposed that the roof of the shop in dispute from the backside had fallen down and there were minor cracks in the back wall of the shop. The petitioner when appeared as his own witness accepted that the rear portion of the shop had fallen which had been constructed by him at the instance of the applicant-respondent, However, it was admitted that there is no written consent given by the applicant permitting him reconstruction of the shop in dispute. The Rent Controller on the evidence referred above held, "that the roof of the shop in dispute had fallen down and the shop in dispute has become unsafe and unfit for human habitation". The appellate authority while discussing this issue has merely referred to the respective stand of the parties as is clear from the following part of the judgment which deals with this aspect of the matter. The same reads as under :-

"The next contentions that the shop in question is unfit and unsafe for human habitation and the shop in question is not repairable until and unless it is reconstructed. It is stated that the verandah of the shop in dispute is lying collapsed and the bricks of the rear portion have fallen down and the disputed shop was built up of old bricks and the shop in question is unfit "and unsafe for human habitation. It is further in the evidence that the wooden planks of the shop have been eaten out by white ant and the portion of the roof of shop was fallen down which is admitted by the respondents while appearing as a witness that the part of the roof of the shop in dispute had fallen down and it is further contended that the roof of the second shop which was adjoining of the present one has been constructed by them at the instance of the applicant but the respondents failed to produce any document which can prove the written consent of the applicant to reconstruct the building in question regarding the replacing of roof of the shop."

13. A bare perusal of the above paragraph reveals that the appellate authority has not arrived at any firm conclusion as to whether the shop in dispute had become unfit and unsafe for human habitation. There is no averment either to the fact that the appellate authority affirmed the order of the Rent Controller under this issue.

14. The relevant provision regarding eviction on the ground of building having become unfit and unsafe for human habitation is contained in Section 13(3)(a) (iii) and sub section (4) which for facility of reference is hereunder reproduced :

"13(3) (a) : A landlord can apply to the Controller for an order directing the tenant to put the landlord in possession-

(i) xx xx xx (ii) xx xx xx (iii) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Govt. or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation.

(4) Where a landlord who has obtained possession of a building or rented land in

pursuance of an order under sub paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (3) does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under subparagraph (a) of paragraph (a) of sub-section (3), his family does not occupy the residential building, or, if possession was obtained by him on behalf of his son in pursuance of an order under sub-paragraph (iv) of paragraph (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for a continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under subparagraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly."

15. In the present case, the accepted position between the parties is that back portion of the roof of one shop had fallen which, according to the petitioners, have been replaced at the instance of the applicant whereas the applicant insists that no such consent was ever sought or given by him as stated by the petitioners. Accepting that the roof of the shop had fallen, it is to be seen as this itself whether furnishes a ground for evicting the tenant. No expert has been examined by the parties to prove the existing condition of the building and in the absence of the same there is only oral testimony of the parties blowing their own trumpets. Faced with this dilemma, one has to assess on the basis of the proved fact, i.e., whether the roof of the back portion of the shop having fallen will entitle the landlord to seek eviction of his tenant/tenants u/s 13(3)(iii) of the Act Section 13(3)(iii) of the Act is applicable in case any building or rented land has become unsafe and unfit for human habitation. The apex Court in case *Shadi Singh's case* (supra), has examined this provision in the light of rider placed upon the Rent Controller in terms of sub-section (4) of section 13 of the Act. In the above cited case the landlord sought eviction from the demised premises alleging that the building requires reconstruction since it became unfit and unsafe for human habitation. The Rent Controller vide order dated March 5, 1973, ordered eviction whereas the appellate authority vide order dated May 7, 1975 reversed which order again was reversed by the High Court, thereby restoring the order of the Rent Controller. The apex Court examined this aspect in the light of the provisions referred above and held that the tenant is within his right to effect the necessary repair by filing an application u/s 12 of the Act and even u/s 108(f) of the Transfer of Property Act. In the present case, except for the evidence that the roof had fallen, there is no material on record that the remaining portion of the building is unfit and unsafe for human habitation. Statement of Ajmer Singh-AW-3 draftsman can hardly be taken as a statement of an expert for assessing the condition of the building. Unless the evidence warrant an inference that falling down of the roof in one room was fully indicative of the damaged and weak condition of the entire building and that collapse of the

roof was not a localised event, it would not be proper to conclude that the entire building had become unfit and unsafe for human habitation. Accepting that the roof which had fallen been replaced by the petitioners without seeking the permission of the Rent Controller in terms of Section 12 of the Act, would not be suggestive of the allegation that the same was done with a view to defeat a valuable right which had accrued to the landlord on account of this condition of the building. It also cannot be lost sight of the fact that the rent application was filed way back in August 1986 and the building is still in evidence i.e. after a period of almost six" years. For the reasons stated above, even the finding recorded with regard to the building having become unfit and unsafe for human habitation is also unsustainable.

16. For the aforesaid reasons, I accept the revision, set aside the order of the appellate authority as well as the Rent Controller and dismiss the eviction application filed by the respondent landlord The parties will, however, bear their own costs.