

(2013) 07 P&H CK 0261

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 6089 of 2011 (O and M)

Kulwant Kaur and Others

APPELLANT

Vs

Sardarni Sawinder Kaur Dhillon and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(3)(a)(i)(a)

Citation : (2013) 07 P&H CK 0261

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : Baldev Raj Mahajan, for the Appellant; M.L. Sarin and Mr. Nitin Sarin, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is tenant's revision petition challenging the order dated 21.08.2006 of the Rent Controller, Amritsar whereby eviction of the petitioners has been ordered on the ground of bonafide necessity of the respondent-landlords and on the ground that the premises in question has become unfit and unsafe for human habitation, and the judgment dated 17.08.2011 of the Appellate Authority, Amritsar whereby appeal filed by the petitioner-tenants against the order of eviction passed by the Rent Controller was also dismissed. In the eviction petition, the respondent-landlords pleaded that they require the demised premises for their own bonafide use and occupation as respondent No. 3 has since retired from Army as Colonel on 21.07.1997 and is without any avocation in life, and respondent No. 4 is a widow and wants to absorb herself in the business to keep herself busy, and therefore, they need the demised premises for their own use and occupation having been interested in setting up a restaurant on modern lines in the demised premises. It has been further averred that the respondent-landlords do not own or occupy any other commercial premises in the urban area of Amritsar. The respondent-landlords further pleaded that the demised premises was otherwise unfit and unsafe for

human habitation having outlived its life and they want to rebuilt the same before commencement of their avocation therein. The structure is without proper foundation. It is of mud mortar and walls are cracked and disintegrated. It is most in sanitary, full of dampness and affected by Saltar porter. Even the wooden roof had collapsed but the petitioners have re-laid the same with R.B. slab without the consent of the respondent-landlords but the walls are unable to bear the massive weight of R.B. slab. The flooring provided is kacha with ruts and thus, the petitioner-tenants are liable to be evicted.

2. Upon notice, the petitioners filed written statement raising various preliminary objections. On merits, it was admitted that they were the tenants under respondents No. 1 and 2 but denied that the premises in question has fallen to the share of respondents No. 3 to 5. It was further denied that they were liable to be ejected from the demised premises. It was further stated that they have already paid the arrears of rent upto 31.07.1990 and have tendered the rent upto 30.09.1998 along with costs and interest. The requirement of respondent-landlords for the demised premises for their own use and occupation was also denied. It was further denied that the respondents do not own or possess any other commercial premises in the urban area of Amritsar. It was further stated that the respondent-landlords own an area of more than 5000-6000 square yards in the urban estate and even that adjoins the demised premises. It was further denied that the demised premises was unfit and unsafe for human habitation. It was also denied that the demised premises requires reconstruction. The other material averments made in application were denied and dismissal of the petition was prayed.

3. The respondent-landlords filed replication denying the averments made in the written statement and reiterating the contents of the eviction petition.

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

1. Whether the respondent is in arrears of rent as prayed for? OPA
2. Whether the petitioners No. 3 to 5 require the demised premises for their own bonafide use and occupation? OPA
3. Whether the demised premises are unfit and unsafe for human habitation? OPA
4. Whether the respondent is liable to be evicted from the demised premises? OPA
5. Whether the applicants are estopped from their own act and conduct from filing the present application? OPR
6. Whether the applicants have no locus standi for filing the present application? OPR
7. Whether the application is barred by the principle of res judicata? OPR

8. Whether the application is bad for mis joinder and non joinder of necessary purposes? OPR

8-A. Whether there exists any relationship of landlord and tenant, between the applicant and respondent No. 3 to 5? OPA

9. Relief.

5. Since the arrears of rent were tendered and accepted, the issue No. 1 was decided against the landlords being not pressed. Issues No. 5, 7 and 8 were not pressed by the petitioner-tenants and thus, the same were decided against them. Issue No. 6 was also decided against the tenants. Under issue No. 8-A, it was held that there exists a relationship of landlords and tenants between the parties. Under issue No. 2, the ground of bonafide necessity of the respondent-landlords was accepted by the Rent Controller. Under issue No. 3, the Rent Controller found that the demised premises has become unfit and unsafe for human habitation, and thus, the issue No. 4 was also answered in favour of the respondent-landlords holding that the petitioner-tenants were liable to be evicted on the ground that the demised premises is required by the respondent-landlords for their own use and occupation and that the demised premises has become unfit and unsafe for human habitation. Resultantly, the eviction petition was allowed vide judgment dated 21.08.2006.

6. Feeling aggrieved from the aforesaid order of the Rent Controller, the petitioner-tenants filed an appeal before the Appellate Authority, Amritsar, which was also dismissed vide impugned judgment and decree dated 17.08.2011. The relevant part of the judgment of the Appellate Authority, wherein findings regarding personal bonafide need of the respondent-landlords have been upheld, reads thus:

20 The learned counsel for appellant has vehemently contended that the petitioners have got landed property of more than 6000 sq. yards, located in the urban estate of Amritsar and therefore, they do not require the disputed shop, which, has been rented out to the appellants. In this context, the reference is made to the statement of Arwinder Singh RW5.

RW5 states that adjoining to the disputed shop, the petitioners own 5000/6000 sq. yards of land. That the petitioners own commercial land. Similar statements were made by RW1 Balbir Singh and RW2 Swinder Singh. However, except this oral testimony of respondent witnesses that the petitioners own 6000 sq. yards land, located in the urban area, there is no documentary proof or evidence regarding this alleged commercial land. In fact, in their cross-examination, the respondents witnesses have been unable to identify or give out the khasra numbers of the alleged 5000/6000 square yards of land owned by the petitioners. RW5 Arwinder Singh, who is LR of respondent Nand Singh, admits in his cross-examination that Col. Surjit Singh owns no other property in urban area of Amritsar, except the shop shown in Ex. A73. That Col. Surjit Singh is without any avocation in life. Besides the above discussion, even in the evidence

of AW-9 Col. Surjit Singh, it has come that the petitioners do not own or occupy any other commercial premises in the urban area of Amritsar nor they have vacated any such accommodation since the commencement of the Act. From the above discussion, it follows that the petitioner does not own any other shop or such like property in the urban area of Amritsar, on which a similar business of restaurant can be opened by the petitioners. The allegations of respondents/appellants that the petitioners own 5000/6000 sq. yards of urban land, have remained totally unproved on the record.

21. Now coming to the issue of personal necessity of the petitioners as regards the shop in dispute. PW-9 Col. Surjit Singh has stated in his evidence that he requires the premises in dispute for his own use and occupation. He is without any avocation in life since his retirement from Army in the year 1997. PW-9 further states that even petitioner No. 4 is a widowed lady, who wants to keep herself busy by setting up business in the disputed shop. They want to open restaurant in the shop in dispute, which is located near the Bus Stand as well as abutting the G.T. Road. That both Col. Surjit Singh and petitioner No. 4 namely Jatinderjit Kaur have got a bonafide necessity for the disputed shop. The above requirement of petitioners is virtually admitted by the respondents in their evidence. RW5 Arwinder Singh admits in his cross-examination that applicant Col. Surjit Singh, after his retirement from the Army, is without any avocation in life. RW5 further admits that applicant Col. Surjit Singh, his brothers' wife and daughter have a bonafide need of the disputed shop for setting up their hotel. Once the respondent himself admits the bonafide requirement of the petitioners in the shop in dispute, thereafter nothing remains to be proved on behalf of the petitioners. Even otherwise, ratio of law is well settled that admission is the best evidence on which the opposite party can rely upon. In this context, reliance is placed on the authorities:

1. "M/s. Mahavir Jain Shoe Store, Khanna vs. Dr. Gian Chand Loomba and another, Vol. CXXIV-(2000-1), Punjab Law Reporter, page 35", wherein it has been held by the Hon'ble High Court that admission is best evidence that an opposite party can rely upon and is decisive of the matter.

2. " Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, ", wherein, it was held that an admission is the best evidence that an opposite party can rely upon.

22. Even otherwise, the landlord is the best judge of his requirements as regards to place where he wants to set up his business. The tenant cannot dictate terms to the landlord as to which place would be suitable for setting up the business of the landlord. In this context reliance is placed on authority:

Vijay Kumar Vs. Sushil Kumar and Others, , wherein, it was held that when the landlord requires the shop to start his business then nothing stops the landlord from expanding his business.

23. In view of aforesaid discussion, it is held that the petitioners have got a

bonafide necessity for setting up the business of restaurant in the shop in dispute and the requirement of the petitioners qua the shop is genuine and bonafide.

7. At this stage, it is useful to refer to the following paragraphs of the judgment of the Appellate Authority, Amritsar, wherein the issue with regard to the question whether the building has become unfit and unsafe for human habitation has been discussed:

24. As regards the fitness of the shop in dispute regarding habitation is concerned, the petitioner examined M.R. Anand, Civil Engineer as PW-3. PW-3 has stated that he has passed degree of Civil Engineering and retired as SDO from Irrigation Department after 37 years of service. PW-3 states that he inspected the premises in dispute in the presence of both the parties and submitted his report Ex. AW-3/1 and site plan Ex. AW-3/2. As per the abovesaid report Ex. AW-3/1, it has been opined by PW-3 that the demised building is beyond repair and requires reconstruction from the foundation level. The building is unfit and unsafe for human habitation. In the report, it is mentioned that the building is 50/60 years old. The walls are bugling in. There are vertical cracks in the walls, which show that there is uneven settlement of the foundation. The foundation of the building is sagging down. The wooden portion of the roof is damaged and eaten up by the ants. That the condition of the building is unsatisfactory.

25. On the other hand, the respondents/tenants examined their Civil Engineer P.N. Aggarwal as RW3. RW3 P.N. Aggarwal tendered his report Ex. R1. RW3 P.N. Aggarwal states that he inspected the building on 19.12.2005 and also took photographs of the disputed shop. In his opinion, the overall condition of the shop, in dispute, is satisfactory and the same is in good and perfect condition for human habitation.

26. In the considered opinion of the Court, the Civil Engineers appointed by the respective parties for inspection of the building are giving contradictory reports regarding the condition of the shop in dispute. The petitioners have also proved on record the photographs of the shop in dispute from Ex. A35 to Ex. A68. I have perused the photographs as well as both the reports Ex. AW-3/1 and Ex. R1. In my considered opinion, the actual and factual condition of the shop, in dispute, as is evident from the photographs, it is clear that the disputed shop is in dilapidated condition. The report Ex. AW-3/1 tendered by M.R. Anand, PW-3 appears to be correct and more authentic. The Court places reliance on this report. As such, it is held that the shop in dispute is unfit for human habitation.

27. The learned counsel for the appellant Shri Maneesh Bajaj, Advocate, has vehemently argued that the various admissions of RW5 Arvinder Singh, appearing in his cross-examination, appear to be typographical mistakes. That it is not possible that a tenant would admit the entire case of the petitioner in his cross-examination. Therefore, no reliance should be placed on the cross-examination of RW5 Arvinder Singh.

In my opinion, the cross-examination of RW5 Arvinder Singh was conducted on 25.07.2006. Thereafter, the case was decided on 21.08.2006. There was a period of one month available to the respondent or his counsel to assail the cross-examination and point out the alleged typographical mistakes to the Court. However, no application in this context was moved by the respondent. As such, now at this stage of argument in the appeal, the appellant cannot canvass or argue that the admissions of RW5 Arvinder Singh are nothing but typographical mistakes. The Court does not find any force in the above arguments of counsel for the appellant Shri Maneesh Bajaj, Advocate.

28. In view of the aforesaid discussion, it is held that the findings of the learned Rent Controller on all the issues are legally correct and are accordingly upheld. There is no ground to interfere with the findings of the learned lower Court. In view of the aforesaid discussion, I do not find any merit in this appeal and the same is hereby dismissed with costs. The appellant/tenant is granted a period of three months from today to hand over the vacant possession of the shop in dispute to the landlord.

8. Still not satisfied, the petitioner-tenants have approached this Court challenging the impugned orders of eviction and dismissal of the appeal by the authorities below.

9. Learned counsel for the petitioners has vehemently argued that the respondent-landlords have failed to prove the necessary ingredients of Section 13(3)(a)(i)(a) of the East Punjab Urban Rent Restriction Act, 1949 inasmuch as it has been proved on record that the respondent-landlords owned and possessed sufficient commercial property measuring more than 6000 square yards and the said land is capable of being used as a restaurant having been abutting the G.T. Road and thus, the present petition has been filed with mala fide intentions and thus, their need cannot be held to be bonafide. According to the petitioners, the respondents are having sufficient property just adjacent to the shop in dispute and they can start their business in that property/site and that the eviction petition has been filed with mala fide intention just to enhance the rent and to put pressure on the petitioners to vacate the premises in dispute, which is not at all required by the respondent-landlords for their personal use and occupation. Since the respondents own an area of more than 6000 square yards in the urban estate adjoining the demised premises, therefore, the alleged need of the respondent-landlords is not bonafide.

10. It has been further argued that the findings of the authorities below that the building in dispute is unfit and unsafe for human habitation cannot be sustained. Admittedly, the roof of the shop has been replaced by R.B. slab, in such circumstances it cannot be held that the building has become unfit and unsafe for human habitation. The petitioners were well within their rights to carry out repair in the tenanted premises and thus, the authorities below have acted with perversity while returning the findings against the petitioner-tenants on this issue.

11. However, learned counsel for the respondent-landlords has vehemently supported the findings of the authorities below on the aforesaid issues and has argued that there is voluminous evidence to prove the bonafide need of the respondent-landlords, and further that the building in dispute has become unfit and unsafe for human habitation. Learned counsel has also argued that the authorities below on appreciation of evidence have recorded a concurrent finding of fact and the same cannot be interfered in the instant revision petition, as there is no material on record to controvert the aforesaid findings.

12. I have heard learned counsel for the parties and perused the order of eviction passed by the Rent Controller, Amritsar as well as the judgment of the Appellate Authority, Amritsar dismissing the appeal.

13. A perusal of the judgment of the Appellate Authority, as noticed above, would show that the landlord Col. Surjit Singh AW-9 has categorically stated in his evidence that he required the demised premises for his own use and occupation as he is without any avocation in life after his retirement. AW-9 further stated that even respondent No. 4, who is a widow, wants to keep herself busy by setting up a business in the shop in dispute. They have categorically stated that they want to open a restaurant in the shop in dispute, which is located near the bus-stand as well as abuts the G.T. Road.

14. The above requirement of the respondent-landlords is virtually admitted by the petitioner-tenants in their evidence, and even before this Court the requirement, as stated by the respondent-landlords, is not disputed.

15. The argument raised before this Court on behalf of the petitioner-tenants is that admittedly the respondent-landlords are having landed property of more than 6000 square yards located in the urban estate of Amritsar, which is adjoining the demised premises and therefore, they could very well construct the restaurant on modern lines in that space and in view of the fact that they are having such a huge commercial land at their disposal, their need cannot be termed as bonafide. It has been further averred that since the respondent-landlords are having commercial space at their disposal it cannot be said that they do not have any other commercial property in the urban area of Amritsar, and therefore, the ground of personal bonafide necessity is not proved.

16. The argument raised on behalf of the petitioner-tenants is liable to be rejected outrightly. It is well settled that landlord is the best judge of his requirements with regard to the place where he wants to set up his business and the tenant cannot dictate terms to the landlord as to which place would be suitable for setting up the business of the landlord.

17. Even otherwise, it may be noticed that requirement of law is that the landlord do not own or occupy any other commercial premises in the urban area wherein the demised premises is situated. Admittedly, the respondent-landlords do not own or occupy any other commercial premises in the urban area of Amritsar. The vacant land having commercial viability cannot be equated with the

commercial premises to non-suit the respondent-landlords on the ground that they do not fulfill the ingredients of Section 13(3)(a)(i)(a) of the Act. Thus, no fault can be found with the findings of the authorities below on the issue of personal bonafide need of the respondent-landlords, which stands fully proved.

18. It may further be noticed that both the authorities below on appreciation of evidence have recorded a concurrent finding that the demised premises is beyond repair and requires reconstruction from the foundation level. There is enough evidence on record showing that the walls of the demised premises are bulging in and there are vertical cracks in the walls which show that there is uneven settlement of the foundation. Moreover, the foundation of the building is sagging down and the wooden portion of the roof is damaged and eaten up by the ants. The building is more than 50-60 years old and thus, the shop in dispute is in a dilapidated condition. Keeping in view the concurrent findings of fact, which could not be disputed before this Court, I am not inclined to take a different view than the one taken by the authorities below in this regard. Thus, I find no merit in the arguments raised before this Court.

19. No other argument has been raised. Dismissed.