
(1985) 04 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1806 of 1984

L.D. Khanna

APPELLANT

Vs

J.K. Puri and others

RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Citation : (1985) 1 RCR(Rent) 512

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : S.S. Sood and Sh. K.K. Cuccria, Sh. H.L. Sarin and Sh. Sukhdev Singh, for the Appellant; Sh. G.R. Majithia , Sh. Rahul Karwal and Sh. Arun Sanghi, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This is tenant's petition against whom eviction order has been passed by both the authorities below.

2. The building, in dispute, is located along the G T. Road, Jalandhar City. It was originally owned by Sh. Shadi Ram Chopra who had inducted the Petitioner, the sole proprietor of M/s G. D. Khanna and Sons, as a tenant thereon in the year 1958 on a monthly rent of Rs. 300/-. After the death of the said Shadi Ram Chopra in the year 1963, his only daughter Shrimati Savitri Devi succeeded him and, thus, became the landlady qua him. She also died in the year 1973. On her death, she was succeeded by her two sons, Jiwan Lal Puri and J. K. Puri and her husband Shri Sohan Lal Puri. Thus, the said three persons became the landlords qua him after her death. They filed the ejectment application against the tenant on February 14, 1977, seeking his ejectment from the premises on the ground that these were rented out for residential purposes but the tenant has, without the consent of the landlords, changed the use of a portion thereof on the ground floor by converting one room into a shop. It was also pleaded that he had made material alterations in the demised premises by removing the intervening walls and adding an office and store room in the front room of the premises while

converting them into a shop. According to the landlords, this alteration had resulted in impairing the value and utility of the premises. It was further pleaded that J. K. Puri, one of the landlords, along with his family was residing in the house of his father Sohan Lal Puri and that he required the premises, in question, for his personal use and occupation as he wanted to live separately from his father. The allegations made in the ejectment application were controverted by the tenant. It was pleaded by him that the premises in question, were taken by him on rent from Shri Shadi Ram Chopra, on the basis of the rent note dated January 4, 1958, mark A, but the tenancy was to begin from January 15, 1958. It was also pleaded that the original landlord had got the ground floor changed into a shop and that a sum of Rs. 1,800/- was paid as advance rent for six months. The tenant-firm has taken the ground floor of the premises for running a shop. Prior to the inception of the tenancy, the ground floor of the premises was being used as office by the Asian Assurance Company while in the upper portion thereof the Manager of the said company used to reside. Regarding the personal necessity of J. K. Puri, Landlord, to occupy the premises for his own use and occupation, it was stated by the tenant that the bungalow of Shri Sohan Lal Puri where the said landlord along with his family was residing, was a huge building having scores of rooms besides an annexe which had been rented out to Shri K. P. Bhatnagar, income tax-Officer. A plea was also taken that J. K. Puri, landlord, along with his family, has separated from his father for the last about 15 years and was residing in the said commodious building" of his father Shri Sohan Lal Puri and, thus, he did not require the building, in dispute, bona fide for his use and occupation. The learned Rent Controller found that the rent note, mark A, had not been duly proved. According to him, there was no evidence on the file to "prove the execution of the rent note, mark A and that the same was signed by Shri Shadi Ram Chopra. So, the terms of the rent note could not be ascertained without proof of its execution. On the question of the bona fide need of J. K. Puri, landlord, to occupy the premises for his use and occupation it was found that he required the premises bona fide such. The plea of the landlords that the tenant had impaired the value and utility of the premises by making alterations therein was also accepted. It was found that since the intervening walls had been removed by the tenant, it had certainly weakened the building. On these findings, the eviction order was passed against the tenant. In appeal, the Appellate Authority re-versed the finding of the Rent Controller as regards bona fide requirement of J. K. Puri, landlord, to occupy the premises. According to it, the sole ground on which the said landlord wanted to reside separately from his father was that his wife was having strained relations with his father, but this fact was never disclosed in the ejectment application ; especially when it was not his case that the accommodation in the bungalow of his father was inadequate. It was further found by it that admittedly the wife of Shri Sohan Lal Puri, had already expired. The family of J. K. Puri, landlord; comprised of his two sons and his wife. His eldest son was studying in B. A. (Final) and was 22 years old. Thus, keeping in view the limited number of the members of the family of J. K. Puri, there was no escape but to hold that the accommodation in his possession along

with his father Shri Sohan Lal Puri was quite sufficient for his need and the finding of the Rent Controller to the effect that J. K. Puri, landlord, required the premises for his bona fide need was not sustainable. However, as regards the material alterations in the demised premises, the finding of the Rent Controller in that behalf was affirmed. Thus, the eviction order passed by the Rent Controller against the tenant was maintained. Dissatisfied with the same, the tenant has come up in revision to this Court.

3. The Learned Counsel for the Petitioner contended that in the notice, Exhibit A. 2, dated November 4, 1976, issued prior to the filing of the ejectment application, no details of the alleged material alterations were given. In any case, argued the Learned Counsel, there is absolutely no evidence on the record as to the details of the walls said to have been removed by the Petitioner. There is no evidence either whether the said walls supported any roof or not. According to the Learned Counsel neither in the ejectment application nor subsequently in evidence the date or time has been suggested as to when the alleged alterations were made by the tenant. In any case, there is no evidence on the record to show as to how the alleged alterations had materially impaired the value and utility of the premises. No expert evidence was produced in that behalf. The Learned Counsel further argued that all the alterations were made by the original landlord Shri Shadi Ram Chopra while renting out the demised premises and that no alterations whatsoever were made by the tenant after he had taken the premises on rent. Reference was made to *Shantinath S Ghogade v. Rajmal Uttamchand Gugale* 1979 (1) R.C.J. 102, to contend that the transferee landlord could not take the benefit of the breach of any provision of the Rent Act which had taken place before he became the landlord qua the tenant. Reliance was also placed on *Attar Singh v. Inder Kumar* (1967) 69 P.L.R. 83 and *Amar Singh v. Shiv Ram* 1984 (1) R.C.J. 609, to contend that the purpose of the rent control legislation was to protect the tenants from the arbitrary eviction by the landlords and that the litigation under the Rent Acts was different from the ordinary civil litigation. Reference was also made to 1982 (1) R.L.R. 288 *Govind Ram v. Smt. Kushaly Rani* for the proposition that a landlord has to prove by cogent evidence as to how the alleged alterations had impaired the value and utility of the demised premises. On the other hand, the Learned Counsel for the landlords-Respondents submitted that from a perusal of the evidence on the record, it has been concurrently found by both the authorities below that the tenant had impaired the value and utility of the premises by making alterations therein and this being a finding of fact could not be interfered with in the revisional jurisdiction. The Learned Counsel also contended that the rent more, mark A, was not duly proved and that the tenant never issued a notice to them to produce the original rent note, if any. According to the Learned Counsel, it was the tenant himself who had admitted that the landlord Shri Shadi Ram Chopra only converted the outer room on the ground floor into a shop by affixation of a shutter in front of the said room. No other alteration was suggested by the tenant, nor was done by the landlords. Thus, argued the Learned Counsel, this

having been admitted by the tenant himself, it has been rightly concluded by the authorities below that the entire alterations except the fixing of the shutter-by the original landlord Shadi Ram Chopra, were carried out by the tenant which, according to the authorities below, had obviously impaired the value and utility of the premises. In support of the contention, the Learned Counsel relied upon *Narain Singh v. Bakson Laboratories* 1982 (1) R.C.J. 1:1981 Curr. L. J. (Civ.) 414. Reliance was also placed by the Learned Counsel to contend that the ground for eviction of a tenant which existed earlier was also available to the subsequent landlord, on *Pritam Singh v. Raja Ram* (1964) 66 P.L.R. 289. The Learned Counsel also assailed the finding of the Appellate Authority as regards the bona fide requirement of J. K. Puri, landlord, to occupy the demised premises for his use and occupation. According to the Learned Counsel the finding of the Rent Controller, in this behalf was correct and the same has been reversed by the Appellate Authority arbitrarily.

4. I have heard the Learned Counsel for the parties at a great length and have also gone through the pleadings and the relevant evidence on the record.

5. According to the averments made in paragraph 5 of the ejectment application, the premises, in question, were rented out to the tenant for his residence whereas without the consent of the landlords, he changed the user of a portion thereof by converting one room on the ground floor into a shop. It was further averred therein that the tenant had made material alterations in the property without the consent of the landlords. He had removed the intervening walls and had added an office and store room in the front room while making it a shop. The value and utility of the premises was, thus, materially impaired. In the written statement filed on behalf of the tenant, it was specifically pleaded that Shri Shadi Ram Chopra, the original owner of the premises, had himself got the ground floor of the premises altered so as to serve as a shop and the premises were let out for business and residence by him. As regards the plea of material alterations carried out by the tenant, it was maintained that the alleged alterations were brought about by Shri Shadi Ram Chopra, the original owner, himself to enable the tenant-firm to use the ground floor of the premises, as agreed, as a shop. It was specifically denied that the alterations made by Shri Shadi Ram Chopra had materially impaired the value and utility of the premises, in question. The evidence on the record in this regard is to be examined keeping in view the allegations made in the ejectment application and the reply filed thereto by the tenant. The tenant while appearing as R. W. 1, has categorically stated in his examination in-chief,-

I have not made any addition or alteration in the demised premises, nor I have removed the intervening wall from the ground floor, as alleged, nor I have converted any room into shop.

In his cross-examination, it was stated by him,-

No alterations were made in the premises. In dispute after 15th January, 1958 I

do not know what alterations were made by the landlord in the premises in dispute, from 4th January, 1958 to 15th January, 1958. We had asked the landlord to convert the outer room on the ground floor into a shop by affixing a shutter in front of the said room which was done by the landlord. No other alteration was suggested by us, nor done by the landlord.

It is from this piece of evidence that the authorities below came to the conclusion that the only alteration made by Shri Shadi Ram Chopra were the affixing of the shutter and, therefore, the removal of the intervening wall was not done by him, i e, Shri Shadi Ram Chopra. This is the misreading of the whole evidence ; particularly in view of the pleadings of the parties and the testimony of the tenant He has throughout pleaded that no alternations were made by him and that all the alterations were made by Shri Shadi Ram Chopra while renting out the premises in the year 1958. It has been assumed by the authorities below that there was an intervening wall on the ground floor of the demised premises which has been removed by the tenant for which there is absolutely no evidence on the record. It also becomes relevant that the landlords have not specified any period when the alleged alterations were made by the tenant As a matter of fact their case was that the building, in dispute, was given on rent for residence only and that the tenant had changed the user of the ground floor thereof as a shop. This plea of the landlords has been negatived by both the authorities below. From the very inception of the tenancy in the, year 1958, the ground floor thereof was being used as business premises whereas on the first floor the tenant was residing In these circumstances, it was for the landlords to prove as to when the said alterations, if any, were made by the tenant and how the same had materially impaired the value and utility of the premises. As observed earlier there is absolutely no evidence on the record, in this behalf. No expert has been produced on behalf of the landlords to prove that there was any intervening wall which was alleged to have been removed by the tenant and that the alleged removal of the wall had materially impaired the value and utility of the premises in any manner The findings of the authorities below in this regard are based on surmises and conjectures and are, thus, liable to be set aside. It will be pertinent to observe that if any alterations etc such as removing the intervening wall were made, by the tenant, then Shri Shadi Ram Chop a during his life time, was entitled to eject him, but admittedly, no such steps were taken by him Not only that, even his daughter Shrimati Savitri Devi who died in the year 1973, did not move any ejectment application against the tenant on that ground which was available to her also according to the allegations of the landlords. This also goes a long way in proving that whatever alterations were made in the premises, were made by Shri Shadi Ram Chopra the original landlord, himself and not by the tenant. Thus, the landlords have failed to prove that the alleged alterations were made by the tenant after the coming into existence of the tenancy in his favour. Since the landlords have failed to prove that any alterations were made by the tenant, the question of impairing the value and utility of the demised premises, in the present case, does not arise.

6. As regards the bona fide requirement of the landlord J. K. Puri, to occupy the demised premises, the only ground taken in the ejectment application was that at present he was living in the house of his father Sohan Lal Puri, landlord ; he had got no other house in Jullundur City and that the demised premises were required by him and his family for their personal use and occupation as he wished to live separately from his father. There is no plea as to why he wanted to live separately from his father in the ejectment application. Therefore, the Appellate Authority has rightly observed that if actually the sole grouse of J. K. Puri, landlord, and his family to reside separately from his father was that his wife was having strained relations with his father then he was bound to disclose this fact in the petition especially when it is not his case that the accommodation in the bungalow of his father is inadequate. Thus, I do not find any illegality or impropriety in the said finding of Appellate Authority.

7. The net result is that this revision petition succeeds and is allowed. The orders of the authorities below are set aside and the ejectment application filed on behalf of the landlords is dismissed with no order as to costs.