

(1994) 04 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Contempt Petition (C) No. 61 and C.R. No. 156 of 1986

Nanak Chand

APPELLANT

Vs

Smt. Jamuna Devi and Others and Kuljas Rai and Others

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Constitution of India, 1950 — Article 227
Himachal Pradesh Urban Rent Control Act, 1971 — Section 14(2), 14(3), 14(4), 16(4), 21(5)

Citation : (1994) 2 ShimLC 382

Hon'ble Judges : V. Ratnam, C.J

Bench : Single Bench

Advocate : Manohar Lal Sharma, for the Appellant; Kapil Dev Sood in C.R. Nos. 156/86, for the Respondent

Final Decision : Dismissed

Judgement

V. Ratnam, C.J.—This revision petition u/s 21(5) of Himachal Pradesh Urban Rent Control Act (hereinafter referred to as the Act) read with Article 227 of the Constitution of India, arises out of proceedings initiated by the Petitioner u/s 14(4) of the Act, under the circumstances set out hereunder.

2. One Shri Kuljas Rai, whose legal representatives are Respondents 1 (a) to 1 (e) in this Civil Revision Petition, owned plot No. 3 in Block-3 situate in Manali. He let out the aforesaid plot to the Petitioner herein on 15-3-1978, on a monthly rent of Rs. 200 for a period of eleven months initially. A rent-deed was also executed on 20-3-1978. On 11-1-1980, Sh. Kuljas Rai filed an application for eviction against the Petitioner herein u/s 14(2) of the Act praying for an order of eviction on the ground that he required the demised property for raising constructions. The Petitioner resisted the application on several grounds, which need not be noticed in extenso for the purpose of present Civil Revision. Suffice it to say, that on the contents of the eviction petition and the reply resisting the same, the Rent Controller framed three issues, of which issue No. 2 related to

the question whether Kuljas Rai landlord required the plot in question for construction, as alleged. On that issues, on a consideration of the evidence of Shri Kuljas Rai examined as AW-1 and the evidence of the S.D.O., P.W.D., Manali, examined as AW-5 and the contents of the rent-deed dated 20-3-1978, the Rent Controller found that right from the beginning, Shri Kuljas Rai had desired to raise a pucca construction on the plot in question and that this was also not disputed by the counsel for the Petitioner and ultimately found issue No. 2 in favour of Shri Kuljas Rai. However, while granting relief to Shri Kuljas Rai, the Rent Controller did so in the following terms:

...I pass an order of eviction in favour of the applicant and against the Respondent u/s 14(3)(ii)(d) of the Himachal Pradesh Rent Control Act, 1971, directing the Respondent that he will hand over vacant possession of the demised plot to the applicant within a period of two months, i.e. from 17-5-1982. After handing over the vacant possession of the demised plot, the applicant will raise Pucca construction as per sanctioned plan on the plot in question within three years, thereafter i.e., by 17-5-1985 and thereafter will give one shop of the size stated above on monthly rent of Rs. 500 to the Respondent....

3. Since the Petitioner did not handover the vacant possession of the demised plot to Shri Kuljas Rai as per the above order, he filed an application to execute the order of eviction, when the Petitioner raised- objections to the effect that the order of eviction was passed as a result of a compromise which is a nullity and was also not executable and further that the ground on which eviction was sought by Shri Kuljas Rai, u/s 14(2) of the Act, was not available to him. The objections so put forward by the Petitioner were heard by the Rent Controller, Kallu, and by an order dated 3-11-1982, the objections were all over-ruled and the execution was directed to be proceeded with. Against that order the Petitioner preferred Civil Revision No. 294/82 before this Court, which was dismissed on 10-11-1992. Aggrieved by this, the Petitioner filed a SLP before the Supreme Court in SLP No. 11914/82, which was also dismissed on 21-1-1983, with the following observations:

The SLP is dismissed. It is obvious that the Respondent has taken loan for construction and he will start construction work as soon as possible so that the tenant gets the shop immediately after the shop is constructed.

Meanwhile, Shri Kuljas Rai had taken possession of the demised property on 10-12-1982. Subsequently, on 10-5-1984, the Petitioner herein filed a Rent Petition No. 11/84 u/s 14(4) of the Act stating that Shri Kuljas Rai with a view to set at naught the order of the Rent Controller and also the Supreme Court, transferred plot No. 3 to Respondent Nos. 2 to 4 herein and that possession of the plot had also been delivered to them and, therefore, Sh. Kuljas Rai and the purchasers from him, should be directed to deliver-possession of the plot to him. The application so made was resisted by Shri Kuljas Rai and also the vendees from him contending that the order passed by the Rent Controller directing Sh. Kuljas Rai to make available the shop to the Petitioner was beyond the

jurisdiction of the Rent Controller and such a direction was invalid and incapable of being implemented. On a consideration of the prior proceedings and also the adjudications therein, as well as the requirements of Section 14(4) of the Act, the Rent Controller, on 22-2-1984, took the view that the order dated 17-3-1982 passed by the then Rent Controller directing Kuljas Rai to give one shop to the Petitioner, could not be enforced u/s 14(4) of the Act. On that conclusion, the application filed by the Petitioner was dismissed. Aggrieved by the order of the Rent Controller, the Petitioner preferred an appeal before the appellate authority on 17-9-1984. Meanwhile, the Petitioner filed C.M.P. No. 18969/85 in SLP No. 11914/82, praying that Kuljas Rai and Ors. s should be punished for having disobeyed the direction given in SLP No. 11914/82 and that application was dismissed on 26-8-1985. The appellate authority also dismissed the appeal preferred by the Petitioner on 24-3-1986 and aggrieved by that order, the Petitioner has come up before this Court in this proceeding.

4. The main point that arises for consideration in this Civil Revision is whether the Petitioner is entitled to the relief prayed for him u/s 14(4) of the Act. It would be useful to extract that provision:

Where a landlord who has obtained possession of building or rent land in pursuance of an order under Sub-section (2) does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under Sub-clause (i)(e) of Clause (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-clause (iv) of Clause (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 Sub-clause (iii) of the aforesaid Clause (a) puts that building to any use or lets it out to any tenant Ors. 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 made an order accordingly.

5. Though the learned Counsel for the Petitioner attempted to contend that the order of eviction initially passed by the Rent Controller was one by consent and that it had also been passed on a ground not falling u/s 14(2) of the Act invoked by Shri Kuljas Rai, in my view, it is too late in the day for the Petitioner to put forward such contentions. A careful reading of the order of eviction passed by the Rent Controller on 17-3-1982 very clearly establishes that it was not one passed by consent but on contest. Paragraph 6 of that order where issue-2 had been discussed in extenso shows that the Rent Controller had considered the evidence of AW 1, and AW 5 and also recital in AW-2/A to conclude that the ground upon which Sh. Kuljas Rai sought an order of eviction against the Petitioner fell u/s 14(3)(ii)(d) of the Act. Though it may be that Sh. Kuljas Rai had quoted Section 14(2) of the Act in the eviction petition, from the contents of the petition

available in the record, it is seen that the averments therein related only to Section 14(3)(ii)(d) of the Act. At best, therefore, it may be stated that Sh. Kuljas Rai had set out the provision incorrectly in his eviction petition as Section 14(2), though its contents attracted Section 14(3)(ii)(d) of the Act. The Petitioner had also not raised any objection on this score when the matter was dealt with by the Rent Controller. Considering the eviction petition filed by Sh. Kuljas Rai as one appropriately falling u/s 14(3)(ii)(d) of the Act, the Rent Controller was, under the provisions of the Act, empowered only to pass an order directing the tenant to put the landlord in possession of the rented land for construction of a residential or non-residential building and no more. In view of the foregoing, it is not now open to the Petitioner to assail the eviction order either on the ground that it was passed by consent or under a provision of law Ors. than that invoked by Shri Kuljas Rai or that the direction given beyond his jurisdiction should be given effect to. Though the learned Counsel for the Petitioner placed reliance upon some decisions in this context, in view of what had been already stated, it is unnecessary to make a detailed reference to them.

6. That leaves for consideration the question whether the Petitioner is entitled to any relief u/s 16(4) of the Act. Earlier, it had been stated that though Sh. Kuljas Rai purported to file the application u/s 14(2) of the Act, yet, in substance and reality, it was one u/s 14(3)(ii)(d) of the Act and the proceedings had gone on only on that footing before the Rent Controller, culminating in the passing of an order of eviction against the Petitioner. That order so passed by the Rent Controller u/s 14(3)(ii)(d) of the Act, cannot be brought u/s 14(4) of the Act, for, Section 14(4) of the Act does not take in an order passed u/s 14(3)(ii)(d) of the Act, but only Ors. categories of orders, with reference to the availability of the relief of restoration of possession to the tenant. Plainly, therefore, the Petitioner was not in order in having sought the assistance of the Court through Section 14(4) of the Act. The authorities below have also taken into account the nature of the order passed by the Rent Controller as well as the prior proceedings and the categories of cases covered by Section 14(4) of the Act and have come to the conclusion that the Petitioner is not entitled to any relief and on the materials available, that conclusion is unassailable. Consequently, the Civil Revision petition is dismissed.

Contempt Petition (C) No. 61 of 1986.

7. The Petitioner has complained in this petition that Shri Kuljas Rai, in order to defeat the rights of the Petitioner, had disobeyed the orders of the Courts, regarding the obligation to put the Petitioner in possession of one shop, and had sold the property to Respondents No. 2 to 4 and, therefore, they should be punished. While disposing of Civil Revision Petition No. 156/86, it had been pointed out how the direction of the Rent Controller that Sh. Kuljas Rai should make available a shop to the Petitioner is outside the scope of Section 14(3)(ii)(d) of the Act. In Ors. words, the direction given was not within the competence of Rent Controller and under those circumstances, there was no need whatever

for Sh. Kuljas Rai or even Ors. s to implement the same. In addition, in this case, the Petitioner had already made a complaint in this regard before the Supreme Court in C.M.P. No. 18969/85 referred to earlier, and that was also dismissed on 28-6-1985 On a careful consideration of the order of eviction passed u/s 14(3)(ii) (d) of the Act on the basis of the application filed by Sh. Kuljas Rai, the course of the further proceeding before the Rent Controller and Ors. authorities and also before the Supreme Court, there is no question of any wilful disobedience or violation of any order by Sh. Kuljas Rai or the purchasers from him, justifying the taking of action against them, under the provisions of the Contempt of Courts Act. This petition is, therefore, dismissed.