

(2024) 06 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 76 of 2010

Naveen Kapoor and others	Vs	APPELLANT
Joginder Lal Kuthiala and others		RESPONDENT

Date of Decision : 15-06-2024

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 14, 24(5)
Code of Civil Procedure 1908 — Section 115

Citation : (2024) 06 SHI CK 0004

Hon'ble Judges : M.S. Ramachandra Rao, CJ

Bench : Single Bench

Advocate : Bhupender Gupta, Vedhant Ranta, Suneet Goel

Final Decision : Disposed Off

Judgement

M.S. Ramachandra Rao, CJ

The legal heirs of the tenant are before this Court u/s 24(5) of the H.P. Urban Rent Control Act, 1987 (for short 'the Act') assailing order dt.20.04.2010 passed by the appellate Authority under the Act in Civil Miscellaneous Appeal no. 30-S/14 of 2009 conforming the order dt.10.04.2009 in Rent Petition no. 9/2 of 2002/2000 of the Rent Controller (I), Shimla, Himachal Pradesh.

The plea of the landlords

2) The respondents herein had filed a petition u/s 14 of the Act before the Rent Controller stating that the predecessor of the petitioners was a tenant of the subject premises, which is residential; that the building is a old building and its walls have bulged out and it can collapse at any time; and it is therefore required to be pulled down and rebuilt, which cannot be done unless the petitioners vacate the same.

The case of the tenant

3) The tenant/ predecessor of the petitioners filed a reply before the Rent

Controller opposing the petition filed by the respondents/landlords.

4) He contended that the petition is malafide and was filed only to coerce him to enhance the rent. He also contended that the building is located in Lower Bazar, Shimla, where any type of construction or re-construction is barred. He denied that the subject premises has become unsafe and unfit for human habitation or that it was in dilapidated condition; and that the proposed building or rebuilding work cannot be carried out without the premises having been vacated by him.

The events before the Rent Controller

5) Before the Rent Controller, the landlords examined PWs 1 to 4 and marked P-1 to P-28.

6) The Tenant examined RW-1 and RW-2.

The order of the Rent Controller

7) Vide order dt.10.04.2009, the Rent Controller allowed the application filed by the landlords.

8) The Rent Controller believed the statement of landlords' witnesses particularly PW-4, an expert examined by the landlords that the building in question is about 100 years old or more; that it has outlived its life; that the wood used in its construction had decayed and cracks have developed; and the building requires reconstruction.

9) Even the witnesses examined by the tenant admitted that the building is a very old building and material used in its construction would be more than 90 years old.

10) The Rent Controller therefore concluded that the need and requirement of the landlords to reconstruct the building in question is bonafide one as the building was not in a fit condition and that it was in a dilapidated condition. He also noted that the landlords had sufficient funds and means to raise the construction and since the landlords are the best judgment of its requirement, he allowed the application and directed eviction of the tenant.

The Appeal before the Appellate Authority

11) Challenging the same, the legal heirs of the tenant preferred an Appeal being Civil Misc. Appeal no. 30-S/14 of 2009. The said Appeal was also dismissed on 20.04.2010.

12) The Appellate Authority constituted under the Act again appreciated the evidence on record and confirmed the findings of the Rent Controller.

13) The Appellate Authority held that the testimonies of PW-1 and PW-4 was to the effect that the building is more than 100 years old, that it had outlived its life and that the said evidence was not successfully challenged or shattered inspite of lengthy cross-examination on behalf of the tenant. It also held that the landlords

have sufficient funds and means to reconstruct the tenanted premises.

14) The Appellate Authority also considered the circumstance that the landlords had submitted a plan for construction of the proposed building to the Municipal Corporation, Shimla and though it was returned on 09.03.2000 with certain objections, the said objections were removed and the plan was resubmitted to the Corporation and thereafter no rejection of the plan was communicated within the statutory period of 60 days, and so the plan is deemed to have been sanctioned.

15) The Appellate Authority therefore held that the landlords have taken necessary steps for getting plan sanctioned from the M.C Shimla also which shows their bonafides.

16) While dismissing the Appeal, the Appellate Authority observed that execution in favour of the landlords can be done only after the plan is sanctioned by the competent authority.

The instant Revision

17) Challenging the same, this Revision is filed.

18) From the facts narrated above, it is clear that both the Rent Controller as well as the Appellate Authority have noted the dilapidated condition of the building, which is proved to be more than 100 years old, and they also accepted the plea of the respondents that have sufficient funds to rebuild and reconstruct the premises in question. There is also material on record to show that the respondents/landlords had submitted a plan to the Municipal Corporation and there is a deemed permission in their favour, which shows their bonafides.

19) Though counsel for the petitioners sought to contend that the findings of both authorities cannot be accepted, I am of the opinion that the concurrent findings of fact have been arrived at by the Rent Controller as well as Appellate Authority on proper appreciation of evidence, which cannot said to be perverse or based on no evidence.

20) In *Gandhe Vijay Kumar v. Mulji*, the Supreme Court held:

"The appellant before this Court is aggrieved by the order passed by the High Court wherein concurrent findings on facts with regard to the bona fide requirements of the appellant have been upset holding that "the court can reappreciate the evidence to test whether the findings of the Rent Controller are correct".

2. We are afraid, the High Court has misdirected itself and exceeded its jurisdiction. In revisional jurisdiction, the Court is expected to see only whether the findings are illegal or perverse in the sense that a reasonably informed person will not enter such a finding. For proper guidance, it would be appropriate to refer to a recent Constitution Bench judgment in *Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh*, at paras 30, 31 and 43: (SCC pp. 97, 98, 101 & 102)

"30. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided expressly. None of these statutes confer on revisional authority the power as wide as that of the appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the trial court/Rent Controller and the appellate court/appellate authority for rehearing of the issues raised in the original proceedings.

31. We are in full agreement with the view expressed in *Sri Raja Lakshmi Dyeing Works* that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in *Dattonpant* that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to

set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

These principles hold good generally for exercise of revisional power."

21) Therefore, I do not find any merit in this petition, and the same is accordingly dismissed.

22) No costs.

23) All pending applications stand disposed of accordingly.