

(1993) 02 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2580 of 1980

Smt. Tara Rani alias Maya Devi and Others	APPELLANT
Vs	
Murti Shri Dwarka Dhish Ji Maharaj, installed in the Temple of Shri Dwarka Dhish Ji-Maharaj and Others	RESPONDENT

Date of Decision : 01-02-1993

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(2), 15(5)

Citation : (1993) 103 PLR 549 : (1993) 1 RCR(Rent) 431 : (1994) 1 RCR(Rent) 172

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : M.L. Sarin and Alka Sarin, for the Appellant; Vinod Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Tenant-petitioner (hereinafter referred to as the tenant) has filed the present revision petition. Landlord respondent, Murti Shri Dwarka Dhish Ji Maharaj (hereinafter referred to as the landlord) through the trustees of the Board of Trust, managing its affairs, has filed a petition for eviction of the tenant from the demised premises on the grounds of non payment of rent, sub-letting and guilty of materially diminishing the value and utility of the premises (which were likely to impair its value and utility) and on the ground that demised premises have become unfit and unsafe for human habitation. In the written statement filed, tenant controverted the pleas of the landlord and on the pleadings of the parties, the following issues were framed :--

1. Whether the respondent-tenant (No. 1) has materially impaired the value and utility of the premises in dispute as alleged ?
2. Whether the premises in dispute have become unsafe and unfit for human habitation and petitioner wants to construct it ?

3. Whether respondent No. 1 is not liable to ejectment on the ground of subletting as present application is barred u/s 14 of the East Punjab Urban Rent Restriction Act and principles of res judicata ?
4. Whether the present application is maintainable after dismissal in default of earlier application by this Court ?
5. Whether respondents No. 2 and 3 direct tenants under the petitioner ?
6. Whether the tenancy of the respondent No 1 was validly terminated by notice to quit ?
7. Whether the application is properly signed, verified and instituted ?
8. Whether the petitioner has a locus standi to institute the petition ?
9. Whether any portion of the property in dispute has been acquired by the Amritsar Improvement Trust ?
- 10 Relief.

Parties led their evidence and the Rent Controller, decided the issues as under :--

2. Under issue No, 1, it was held that tenant had materially impaired the value and utility of the demised premises, as alleged. Issues No. 2 and 3 were decided in favour of the tenant and against the landlord. Issues No. 4, 6, 7, 8 and 9 were decided in favour of the landlord. Under issue No. 5, it was held that there was no evidence on record to show that respondents No. 2 and 3 were direct tenants under the landlord. In view of the findings recorded under issue No. 1, ejectment of the tenant was ordered by the Rent Controller. Tenant being aggrieved filed an appeal before the Appellate Authority. The Appellate Authority affirmed the findings recorded by the Rent Controller on all the issues.

3. Before me, only findings recorded by the Courts below under issue No. 1 have been challenged. Findings under all other issues have not been challenged. I have heard arguments at length and find no merit in this revision petition. It has been alleged by the landlord that the tenant has demolished the boundary wall, set up garage for repairing motors and a tin shed in the court-yard, has demolished the stair-case and has removed a door frame and removed the door leaves of the disputed building. In support of the allegations, the landlord examined Sarvshri Nand Singh, Civil Engineer, AW-3, Sat Pal, PW-5, Satya Parkash, Photographer, AW-6, Banarsi Dass, AW-7 and K. S. Rekhi, Local Commissioner, AW-10. Shiv Kumar, AW-II, one of the trustees of the Board of Trust, managing the affairs of the landlord, has deposed that the tenant has demolished the stair-case and also the boundry wall and created new passage at the point shown red in the plan Ex. AW-11/2 by construct-in a new wall. It has further been deposed that after demolishing the wall, a workshop has been put up to wash the vehicles. It has been stated that portion shown red in plan AW-11/2 was without roof and now it has been covered with tin shed and the door have been removed. Sat Pal, AW-5 and Banarsi Dass, AW-7 have

corroborated the statement of Shiv Kumar, AW-II. Site plan AW-3/2 has been produced by Nand Singh, AW-3, a Civil Engineer, Satya Parkash, AW-6 has proved the photographs, AW-6/AI to AW-6/G1 in respect of the disputed building. Shri R. S. Rekhi, who had been appointed as Local Commissioner to inspect the spot has stepped into the witness box as AW 10 and produced his report as AW-10/1 and plan AW-10/2. From the report, it is clear that now there is a new stair-case in the premises in dispute and the open space has been covered with the tin-shed and further that a service station and a lift for servicing motor vehicles has been put up. Prithvi Raj, RW-2, who is in occupation of the portion of the disputed building and is carrying on his business in the name of Standard Motors Garage in this portion has admitted in his cross-examination that he had installed a lift for motor servicing in this property in the year 1970. He has further admitted that tin-sheds were constructed on the open space in the year 1971. Photographs AW-6/A I to AW-6/G 1 were put to this witness. He has admitted the correctness of the photographs AW- 6/ AI to AW-6/G 1. He has admitted the raising of the construction without the consent of either Daulat Ram tenant or the landlord. Joginder Kumar RW/3 who is also one of the respondents and is carrying on his work under the name and style of Joginder Electrical Works in the disputed building has stated that the open space in the disputed building was covered to the extent of half by tin-roof. It has further been admitted by him that a shutter to the main gate has been put up, the construction of which took place about 15-20 days. Photographs AW-6/E1 shows his shop at point "X". Daulat Ram tenant-petitioner appeared as RW-6. A reading of the statement would indicate that even he could not deny in the cross examination the existence of the construction at the spot He pleaded that there was an oral agreement between him and the landlord to make additions and alterations. The oral agreement has been denied by the landlord. There is no plea in the written-statement taken by the tenant that the construction was done by him in pursuance to an oral agreement between him and the landlord. The plea regarding the alterations and additions made in pursuance to an oral agreement between him and the landlord cannot thus be entertained. A perusal of the evidence in its entirety would indicate that alterations and additions have been made by the tenant in the premises in dispute without the consent of the landlord.

4. The next question which has to be considered is as to whether the alterations made by the tenant would materially impair or diminish the value and utility of the building in dispute. The tenant has covered a major portion of the court-yard by a tin shed. A service station has been constructed in the disputed building by constructing a lift in it and a shed has been fitted outside the garage. The construction has been carried out of the garage by demolishing the outer wall of the disputed building. Light and air of the rooms in front of which the tin shed has been constructed, has been reduced. I am in agreement with the view taken by the Courts below that alterations and additions made by the tenant would impair and diminish the value and utility of the disputed premises. Accordingly

findings recorded by the Courts below on issue No. 1 are affirmed. Finding on any other issue has not been challenged before me.

5. For the reasons stated in the aforesaid paragraphs, I find no merit in this revision petition and the same is dismissed with no order as to costs.