

(2013) 07 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : CR No. 4020 of 2013

Ved Parkash Kalia

APPELLANT

Vs

Anjana Rani

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 2 RCR(Rent) 630

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Yudhvair Singh and Mr. Rajnish Maniktala, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This revision petition is directed against the judgment, dated 25.03.2013, passed by the learned Appellate Authority, Fast Track Court, Una, H.P., in Rent Appeal No. 35/2010. Key facts necessary for adjudication of this petition are that the respondent-landlord (hereinafter referred to as "the landlord" for the sake of convenience) had filed a petition against the appellant-tenant (hereinafter referred to as "the tenant" for the sake of convenience). The shop was rented out to the tenant in the month of January, 1992 on payment of rent @ Rs. 500/- per month. The tenant has not paid rent of the premises from January, 1996. The tenant has met with an accident and on humanitarian grounds, Amrit Lal, husband of the landlord rented out the premises to the tenant for running a tea stall. Two rooms of the shop in back side were completely damaged and the roof was likely to fall. The balas supporting the roof were completely rotten. The tenant has shifted his tea stall near PWD Executive Engineer Office, Una about 8 years back. He has changed the rotten roof with tin. He has changed the shop into his residence. He was living there with his wife and children. He has constructed the toilet in the premises. The shop in dispute was in existence for the last 100 years. The walls have outlived their life. The structure has become unsafe and unfit for human habitation. It was in dilapidated condition. It was bonafidely required by the landlord for building re-

building and the same cannot be done without the shop being vacated. The acts of the tenant were likely to impaired the material value and utility of the shop.

2. The petition was contested by the tenant. According to the tenant, he was still working in the disputed shop. He has not converted the shop into his residence. The rent of the shop was Rs. 30/- per month. He was inducted as tenant by the husband of the landlord. He has paid rent up to 1996 @ Rs. 30/- per month. It is denied that he has shifted his tea stall near PWD office. The condition of the building is fit for human habitation as it was in good condition.

3. Learned Rent Controller has framed the issues on 02.05.2008. The learned Rent Controller allowed the petition on 25.11.2010. The tenant was held in arrears of rent. He was also held entitled to vacant possession of the demised premises on the ground of materially impairing the value and utility, change of user, the premises having become unfit for human habitation, the same were required bonafidely by the landlord for reconstruction. The tenant was directed to hand over the possession of the demised premises to the landlord within a period of two months.

4. Feeling aggrieved by the order, dated 25.11.2010, passed by the learned Rent Controller, Court No. III, Una, District Una, H.P., the tenant filed an appeal before the learned Appellate Authority, Fast Track Court, Una, H.P. The same was dismissed on 25.03.2013. Hence this petition.

5. Mr. Yudhvair Singh, learned vice counsel for the appellant has vehemently argued that the learned Rent Controller and the learned Appellate Authority has misconstrued and misrepresented the evidence led by the parties. According to him, the tenant has not impaired the value and utility of the building. He then contended that the building was fit for human habitation. He further contended that the building was not bonafidely required by the landlord for the purpose of reconstruction. He lastly contended that there was no change of user.

6. I have heard Mr. Yudhvair Singh, learned vice counsel for the appellant and gone through the judgments of both the Courts below carefully.

7. AW-1, Sh. P.L. Bains, has testified that he has prepared the site plan Ex. AW 1/A. According to him, the rooms of the shop are situated one behind the other. The main shop was in single room.

8. AW-2, D.P. Grover, has prepared the report Ex. AW 2/A. According to him, the tenant resides in the shop, which was in bad condition. In front of the room, the tenant has constructed a kitchen, bath room and a toilet is attached and the rear two rooms have been covered with tin sheets.

9. The landlord has appeared as AW-4. She has led her evidence by way of an affidavit. According to her, the tenant has constructed toilet in the shop and was residing there with his family. The conversion of the shop into residence has impaired the material value and utility of the shop.

10. The tenant has appeared as RW-4. According to her, the electricity meter was installed in his name. He has also admitted that earlier the meter was for commercial purpose and now the same has been converted into domestic. He has also admitted that he has constructed a septic tank and toilet in the front room.

11. RW-2, Shakti Chand, has testified that the back portion of the shop has fallen down. He has admitted that balas (beams) of the front portion have rotten.

12. RW-3, Ramji Dass, has also admitted that rear two rooms and the roof has fallen down and balas (beams) of the front room are rotten. The tenant has put tin sheets on the rear rooms. He has admitted that the tenant has constructed a toilet and septic tank in the front room.

13. The premises were let out to the tenant for the purpose of shop. He has constructed a toilet and septic tank without the permission of the landlord. The act of the tenant to construct a toilet and septic tank has definitely impaired the material value and utility of the shop. The tenant has discontinued his business from the shop and has shifted his kiosk near PWD office. Two rooms in the rear have fallen down. The ballies have rotten.

14. The premises were given on rent to the tenant for shop. He has started residing there with his family without the permission of the landlord. The tenant has himself admitted that earlier a commercial meter was installed and thereafter, he has installed a domestic meter. This statement has also been approved by AW-3, Jatinder Kumar, Junior Assistant, Electrical Sub Division, HPSEB, Una No. 1. The tenant has constructed a toilet and septic tank. These structures have been raised by him to enable his family to stay in the premises.

15. AW-2, Sh. D.P. Grover, has also deposed that the tenant was residing with his family in the premises. The tenant has changed the use of premises from commercial to residential. There is overwhelming evidence on record that the premises have become dilapidated. The walls have outlived their lives. The roofs of rooms have fallen down. The ballies have rotten. The structure is more than 100 years old. The landlord has proved that the structure has become unsafe and unfit for human habitation. The landlord has also proved that the premises were required by him bonafide for re-building, which could not be carried out without evicting the tenants from the shop. RW-2, Shakti Chand has proved that two rooms have fallen down and their roofs have also collapsed. He has also admitted that the balas (beams) have rotten. RW-3 has also admitted that the roofs of two rooms have fallen down and tin sheets were installed.

16. In the revenue record, i.e. copy of Jamabandi for the year 1999-2000, Ex. A1, it has come that the demised premises were recorded in the shape of "Khandhar". The learned Rent Controller, Court No. III, Una, District Una, H.P. has rightly concluded that the tenant was in arrears of rent w.e.f. 1996 onwards. Accordingly, in view of the observations and analysis made hereinabove, there is no merit in this petition and the same is dismissed. However, the tenant is

directed to hand over the vacant possession of the premises to the landlord within a period of one year. The tenant shall pay the arrears and use and occupation charges on every 10th day of the month. In case there is any default, the tenant shall be liable to be evicted forthwith. The pending application(s), if any, also stand(s) disposed of. No costs.