

Guranditta Mal and Others Vs Gian Mittar

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 20, 2002

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 " Section 13(2)

Citation: (2003) 133 PLR 508 : (2003) 1 RCR(Rent) 255

Hon'ble Judges: J.S. Narang, J

Bench: Single Bench

Advocate: A.K. Mittal and Akshay Bhan, for the Appellant;

Final Decision: Dismissed

Judgement

J.S. Narang, J.

The landlord filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 for seeking ejectment of the respondent-petitioner from the shop defined as demised premises in the application filed before the Rent Controller. The ejectment has been

sought on the ground of nonpayment of rent w.e.f. 1.7.1971 at the rate of Rs. 75/- p.m. and the other ground is that the respondent has made

material alteration in the demised shop by raising cabin in front of shop resultantly impairing the light and the air to be enjoyed in respect of the

demised premises.

2. The petition was contested. However, rent has been tendered and the said ground did not remain available to the landlord. The parties led

evidence so far as the second ground is concerned. It has been noticed by the Rent Controller that in respect of the construction of the kacha

Cabin in front of the shop, a notice had been received by him from the Municipal Committee, copy of which has been exhibited as Ex.A-6 and that

in pursuant thereto, the said cabin has been demolished by the Municipal Committee during the pendency of the application before the Rent

Controller. This fact has been noticed by the Rent Controller and the Rent Controller dismissed the application accordingly.

3. The landlord filed an appeal before the Appellate Authority maintaining the claim of material impairment of the demised premises. The Appellate

Authority has held that by raising the cabin in front of the shop the entry of the light and air in the shop has been affected and resultantly the material

impairment to the value and utility of the property has been caused. Thus, the respondent-petitioner is liable to be ejected. The appeal has been

accepted and the respondent-petitioner has been ordered to be evicted on this ground alone.

4. The order dated 7.1.1985 passed by the Appellate Authority has been made subject matter of challenge in the present petition. Learned counsel

for the petitioner has argued that in fact no alteration has been made in the shop as is evident from the fact that a notice had been issued by the

Municipal Committee for removing the cabin which was constructed in front of the demised premises and that the said cabin was demolished by

the Municipal Committee in pursuant to the notice received by him. Thus, the Appellate Authority has fallen into error by still holding that the value

and utility of the demised premises has been materially impaired on account stoppage of light and or on account of the construction of cabin in front

of the demised premises. The factum of demolition of cabin has been noticed by the Appellate Authority yet it has been held that the material

impairment has been caused, it is the settled law that the facts which emerge on account of change during the pendency of the application before

the Rent Controller or before the Appellate Authority can be noticed by the forums and the relief should be granted accordingly.

5. In view of the above, I find that the Appellate Authority fell into error in upsetting the order dated 20.8.1981 passed by the Rent Controller vide

which the application tiled by the landlord has been dismissed. Admittedly, no alteration has been made in the shop and that a cabin had been

constructed upon the land belonging to the Municipal Committee, which has been demolished in pursuant to the notice issued to the petitioner.

6. Revision petition is allowed and the order dated 7.1.1985 passed by the Appellate Authority is set aside and that of the Rent Controller is

upheld. Consequently, the application of the landlord is dismissed.