
(1980) 07 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 852 of 1975

Smt. Raj Rani

APPELLANT

Vs

Amer Chand

RESPONDENT

Date of Decision: July 29, 1980

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 11

Citation: (1980) 07 P&H CK 0011

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: Ram Rang, for the Appellant; H.L. Sarin and Shri R.L. Sarin, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.

The landlord-Petitioner has filed this petition against the order of the Appellate Authority, Jullunder, dated 11th February 1975, where by the order of the Rent Controller directing the ejectment of the tenant has been set aside.

2. Shrimati Raj Rani, Landlord-Petitioner, filed the present application for ejectment of the tenant from the premises in dispute, interalia, on the grounds that the premises in dispute has been used by the tenant for the purpose other than that for which it was leased secondly for her personal requirement. It was pleaded in the application by her that the premises in dispute, which has been described as Taur along with a Chhappar and Kotha thereon was given on rent for residential purposes ; whereas the tenant has started using it as a Diary Farm without the consent of the landlord and thus he has changed the user of the premises which has made him liable for ejectment. In the written statement filed on behalf of the tenant, these facts were controverted and it was pleaded that the premises had been let out for running a dairy and are being used for that purpose from the very beginning. It was further pleaded that the landlord does not require the premises for his personal occupation.

3. On the question of change of user, the Rent Controller came to the conclusion that the tenant took the premises in dispute for residential purposes and has now changed the same into a dairy farm, and was thus liable to ejectment on that ground. On the ground of personal necessity also he came to the conclusion that the landlord has succeeded in proving that she bonafide needs the premises in dispute for her own use and occupation. In appeal, the learned Appellate Authority has reversed the finding of the Rent Controller on both the counts. As regards the change of user, it has been found that the property in dispute was not let out for residential purposes, but was taken by the tenant for running a dairy. On the question of personal requirement, the view taken is that the premises cannot be vacated for this purpose because she does not intend to run any business. Feeling aggrieved against this, the landlord has come up in revision to this Court.

4. The learned Counsel for the Petitioner vehemently contended that from the evidence on the record it has been proved that the premises in dispute were given for residential purposes and not for running the dairy business. However, I do not find any force in this contention. In rent-note, Exhibit PA, no purpose has been given for which the building was let out. From the oral evidence led by the parties, the Appellate Authority has come to a firm finding that it was not let out for running a dairy. Since this finding has been arrived at after the appreciation of the oral evidence, the same cannot be interfered with in the exercise of revisional jurisdiction. Consequently, the landlord is not entitled to seek ejectment of the tenant on the ground of change of user of the building in dispute.

5. As regards the second ground for ejectment pleaded by the landlord, I am of the opinion that she is on a stronger footing. It was never pleaded by the tenant in the written statement that the premises were either rented land or a non-residential building. The finding of the Appellate Authority that since the premises were let out for residential purposes but were obtained by the tenant for running a dairy, and, therefore, it could not be vacated for personal use by the landlord, because she did not intend to run any business, is wholly wrong and illegal. This conclusion was possible only if the premises were held to be rented land regarding which he himself has observed in his judgment that the counsel for the Appellant contended that the description of the property would show that it was a rented land. This view does not appear to be very correct because what was let was not just land but open space with some construction as there was a room and one Chappur, it could be used as a residential purpose as well. Moreover it was never the case of the tenant either in the written statement or otherwise and neither the Rent Controller nor the Appellate Authority has held that the premises in dispute is a rented land.

6. On the bonafide, requirement of the landlord for her own use and occupation, a firm finding has been given by the Rent Controller. It has been observed by him that "even Respondent himself did not state that the accommodation with the Petitioner is sufficient or that her need is not bonafide and in view of this I must hold that the Petitioner has succeeded in proving that she bonafide needs the premises in dispute for her own use and occupation." The finding was not successfully challenged either before the Appellate

Authority or in this Court.

7. The learned Counsel for the tenant contended that in order to find out the nature of the building, one is to look at the use for which it is being put at the time of the application. According to him, since the premise were given for business purpose, i.e. for running a dairy farm, the same will be deemed to be a non-residential building. I am afraid, this contention of the learned Counsel has got no force. If it is so held then the tenant by his conduct can convert any residential building into a non-residential one, which under the Act cannot be permitted particularly in view of the provisions of Section 11 of the East Punjab, Urban Rent Restriction Act, which provides, that "no person shall convert a residential building into a non-residential building except with the permission in writing of the Controller." Under the circumstances, the premises in dispute continued to be a residential building, though the same were being used by the tenant for running a dairy. At the most, the tenant may not be liable to ejectment on the ground of the change of user, because it has been proved that the premises were let out for running dairy thereon. As a result of this discussion, the tenant is liable to be ejected on the ground of bona-fide requirement of the landlord of the premises for her own use and occupation.

8. For the reasons recorded above, this petition succeeds, the order of the Appellate Authority is set aside and that of the Rent Controller directing the ejectment is restored with costs. However, the tenant is allowed a period of three months to vacate the premises provided all the arrears of rent, if any, along with advance rent for three months is paid or deposited in the Court of the Rent Controller within three weeks from today.