

(2006) 01 P&H CK 0053

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6271 of 2004

Vinod Kumar and Another

APPELLANT

Vs

Jagdish Rai and Others

RESPONDENT

Date of Decision: Jan. 18, 2006

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13

Citation: (2006) 3 CivCC 465 : (2006) 143 PLR 438 : (2006) 2 RCR(Rent) 111

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: T.N. Gupta, in C.R. No. 6271 of 2004 and Sumeet Mahajan, in C.R. No. 3212 of 2005, for the Appellant; Surya Prakash, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The challenge in the present revision petition is to the order of ejectment passed by the Authority u/s 13 of the East Punjab Urban Rent Restriction Act, 1949.

2. Civil Revision No. 6271 of 2004 is filed by the alleged sub-tenant whereas C.R. No. 3212 of 2005 is by the person impleaded as a tenant.

3. It is the case of the landlord that M/s Naur Chand Surjit Kumar was inducted as a tenant vide rent note dated 21.5.1971 at the yearly rent of Rs. 2100/-. By virtue of another Rent Note dated 1.5.1975 rent was increased to Rs. 2200/-per month. Ejectment was sought inter alia on the ground that the tenant was in arrears of rent and that he has sublet a portion of the premises in dispute without the written consent of the landlord and that the premises in dispute is unfit and unsafe for human habitation as the building was constructed prior to 1905.

4. It was pleaded that the walls of demised premises have developed cracks. The foundation of the premises have sagged. Roofs of demised building particularly of

chobaras have mostly sagged and are leaking badly during rainy days and whole premises is likely to collapse at any time as it has outlived its life and utility. It was also pleaded that inner layer of most of the walls are brick lined with katcha bricks and with a passage of time they have lost their quality. Ejectment was also sought on the ground that the tenant has made material alterations and has materially impaired the value and utility of the premises.

5. After considering the voluminous evidence produced by the landlord, learned Rent Controller returned a finding that the premises have been sub-let to respondent Nos. 4 and 5. Learned Rent Controller did not agree with the plea raised by the said respondents (petitioners in C.R. No. 6271 of 2004) that they are direct tenants of the landlord. To return such finding learned Rent Controller has relied upon Rent Note PW 8/1 and Rent Note Ex.P. 14. Learned Rent Controller found that though the petitioner in C.R. No. 6271 of 2004 have pleaded that they are direct tenants but there is no convincing evidence to prove this fact. Rather it has come out on the basis of written rent notes that the shop as well as chobaras were let out to the petitioner in C.R. No. 3212 of 2005. To prove that the building is unfit and unsafe for human habitation, the landlord apart from examining himself has examined Building Expert, Kalyan Singh as PW4. Said witness has proved his report Ex.A.1-who has opined that the building in whole is unfit and unsafe for human habitation. To controvert the evidence of the landlord, Romesh Kumar respondent appeared as RW9 as his own witness and also examined P.L. Gupta, Building Expert as RW5 who proved his report Ex.R.8 in respect of ground floor. The report of Shri P.L. Gupta, in respect of first and second floor is Ex.R.9 and site plan Ex.R9/8.

6. After considering the respective contentions of the parties, the learned Rent Controller returned a finding that the alleged tenant has taken the premises on rent, in the year 1955 i.e., 50 years ago and that there was previous ejectment application filed on 2.7.1949. It has been recorded by the learned Rent Controller that "there is no dispute between the parties regarding age and oldness of the building". The Building Expert examined by the landlord has opined that the quality of the material and workmanship was of cheap and inferior quality and that the colour of the entire building has turned brown-blackish by the process of age and it is not worth taking load of chobara. The building need total demolition and reconstruction from the foundation. The learned Rent Controller as well as the Appellate Authority relied upon the report of Shri P.L. Gupta, Building Expert examined by the tenants.

7. It has been found that in his report, the expert produced by the tenant has mentioned that iron girders supported with wooden battens are forming roof and in some roofs, wooden battens are covered by the wooden planks. It has been observed that pattern of the roof in all the rooms is not same which indicate that the roofs were repaired at some stage in the past. According to the said witness, the building is more 80 years of age. Shri P.L. Gupta has also admitted that the building in dispute is devoid of sun light and air and that steps of the staircase leading to the

first floor have been worn out. Learned Rent Controller has taken into consideration photographs Ex.P. 18 to Ex.P.23 depicting that, the walls of the disputed building, have shed its cement crust. On the basis of evidence, the finding was returned that the building in dispute is in a bad shape and that it is unfit and unsafe for human habitation.

8. In appeal against the said judgment, learned Appellate Authority agreed with the finding recorded by the learned Rent Controller in respect of sub-tenancy of the petitioners in C.R. No. 6271 of 2004. The Appellate Authority has not discussed the evidence in respect of subletting. On that basis, learned Counsel for the petitioner has vehemently argued that the pleas of the petitioner of direct tenant having been not considered, the judgment passed by the learned Appellate Authority is not sustainable in law. Although it was required of the Appellate Authority to discuss the evidence of the parties in detail even while affirming the reasoning given by the learned Rent Controller but the said ground by itself is not sufficient to set aside the judgment passed by the learned Appellate Court as the issue whether the building has become unfit and unsafe for human habitation has been examined in detailed by the learned Appellate Authority. The learned Appellate Authority has discussed the evidence of the expert produced by the respondent and affirmed the finding that the building has become unfit and unsafe for human habitation. While considering the findings recorded by the learned Rent Controller, I find that reasoning given by the learned Rent Controller cannot be said to be suffering from any illegality.

9. Learned Counsel for the petitioner has vehemently argued that one wall on the first floor was out of plumb line, not from inside but only from the outside but that will not lead to an inference that the entire construction is in dilapidated condition. The outer wall was out of plumb, was on account of poor workmanship and on that ground the finding recorded that the building is unfit and unsafe for human habitation is not sustainable. It has been argued that replacement of batten or different pattern in the roof is not indication of the fact that the building has become unfit and unsafe for human habitation.

10. However, I am unable to agree with the argument raised by learned Counsel for the petitioner. Not only the outer wall is out of plumb, the roof pattern is a different in the roof which is suggesting of the fact that the roofs have been relaid at subsequent stages. The premises is not having any light or air. Both the Courts have returned a concurrent finding of fact that the condition of the building is unfit and unsafe for human habitation. The said finding is based upon appreciation of evidence. Both the Courts have believed such evidence.

11. In view of above, I do not find any patent illegality or material irregularity in the impugned order warranting interference by the revisional jurisdiction of this Court.

12. Resultantly, both the petitions are dismissed.