(1968) 03 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 30 of 1968

Sat Pal		APPELLANT
	Vs	
Charan Dass		RESPONDENT

Date of Decision: March 6, 1968

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(4)

Hon'ble Judges: Shamsher Bahadur, J

Bench: Single Bench

Advocate: K.C. Puri, for the Appellant; J.V. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Shamsher Bahadur, J.
This is a petition for revision at the instance of the tenant against whom an order for ejectment has been passed by the Appellate Authority, Patiala, on 25th of November, 1967.

2. Sat Pal petitioner has been a tenant of the demised premises consisting of a two-storeyed building since 5th of May, 1959. On the ground floor the petitioner has a shoe-shop whereas on the first floor he and his family are residing in the three chaubaras. The monthly rent of the premisses is Rs. 55.

3. On 11th of October, 1966, Charan Dass, landlord, brought an application for ejectment on two grounds, the first of which namely non payment of rent, no longer survives, the arrears having been paid on the first date of hearing. The dispute both before the Kent Controller and the Appellate Authority centered round the second ground for ejectment that the premises had become unsafe and unfit for human habititation. Under sub-paragraph (iii) of paragraph (a) of sub-section (3) of section 13 of the East Punjab Urban Restriction Act :-

A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

* * * *

(iii) in the case of any building or rented land, if he requires it to cany out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme on if it has become unsafe or unfit for human habitation.

In sub-section (4) of section 13 it is provided that : -

* * * *

Where a landlord who has obtained possession of a. building under suo paragraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.

4. Though there is no dispute that the shop in the ground floor was fit for human habitation, there has been controversy between the parties regarding the condition of the first storey consisting of the Chaubaras. The Rent Controller being of the opinion that the evidence adduced in the case was not sufficient to prove that the building was unfit and unsafe for human habitation declined to make an order for ejectment. This order of the Rent Controller passed on 7th of April, 1967, came up in appeal before the Appellate Authority who finding that the evidence was equally balanced appointed a Commissioner to find out by making inspection at the spot "(1) whether the premises in question are really unfit for human habitation and (2) whether the pre- mises in question can be repaired after spending a reasonable sum in order to make it fit for human habitation". Mr. Narula Municipal Engineer, who was appointed commissioner, submitted a report as under:-

I have been appointed Commissioner to report about the condition of the property, belonging to Shri Charan Dass son of Shri Chhaju Ram. I have seen the property and have found that in the front Chobara four battons have fallen down and in the second Chobara two battons have fallen down.

Secondly, eastern wall of the house, at the top, has also a vertical crack.

The two roofs and the portion of the wall, as referred to in the above paras have rendered first two Chobaras (from the front) unfit for human habitation and need reconstruction.

5. No malice on the part of the landlord was alleged and none has been proved There is ample safeguard provided in sub-section (4) that if the landlord does not carry out the repair to the premises which are said to be in dilapidated condition the evicted tenant can ask for restoration of possession.

6. Mr. Puri, the Learned Counsel for the petitioner, has urged that the roofs of the Chobaras are still intact though the rafters may have fallen off. The safety and fitness for human habitation of premises from which eviction is sought does not depend on the imminence of the danger involved. A repair which is likely to be protracted and is inevitable would naturally render the premises unsafe and unfit for human habitation. A landlord, who is anxious to get the premises repaired cannot be refused ejectment merely on the ground that the premises can for some time still be used. There is evidence to show that the tenant had re-roofed the third Chobara at his own expense and it is argued that the tenant may carry out similar repairs in respect of the two Chobaras which have been found by Shri Narula to be unsafe and unfit for human habitation. Mr. Narula, who was specifically asked this question has stated in his report that the two damaged roofs and the crack in the wall rendered the two Chobaras unfit for human habitation and required reconstruction. It has been contended by Mr. Puri that what had to be found by the Appellate Authority as a question of fact has been left for the determination and conclusion of the Municipal Engineer. There was nothing improper or illegal in the order of the Court which required the Commissioner to make a report specifically on the question of safety and fitness of the premises for human habitation and the Municipal Engineer who knows more on this particular aspect of the problem than anyone else has given a categorical answer. I think, the Appellate Authority was fully justified in placing reliance on the opinion of the Muni-cipal Engineer.

7. The Judgment of the Supreme Court in Maharaj Jagat Bahadur Singh v. Badri Parshad Seth (1963) 65 P.L.R. 452, in which it was said that the repairs u/s 13(3)(a)(iii) of the Act were such as are "so extensive and fundamental in character that they cannot be carried out if the tenant remains in possession", does not support the contention of the petitioner''s counsel that the case for ejectment had not been made out. In fact, Mr. Justice S.K. Das, speaking for the Court, went further to observe that "small work as white-washing or filling up the gap in the doorway does not come within the scope of the clause." It cannot be said that the work which is to be done in the present instance is in parity with the white-washing and filling up the gaps, referred to as illustrations of minor repairs by the learned Judge.

8. There is no scope for interference in this petition which therefore fails and is dismissed. In the circumstances, I would make no order as to costs. The tenant, who was given two month''s time by the Appellate Authority, will now vacate the premises within three months from this date.