

(1993) 105 PLR 349 : (1994) 1 RCR(Rent) 259
High Court Of Punjab And Haryana At Chandigarh
Case No: Civil Revision No. 1847 of 1980

Balbir Kumar and
Others

APPELLANT

Vs

Kaka Ram and Others

RESPONDENT

Date of Decision: Dec. 17, 1993

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 " Section 13(3), 15(5)

Citation: (1993) 105 PLR 349 : (1994) 1 RCR(Rent) 259

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: M.L. Sarin, Ashok Handa and Hemant Sarin, for the Appellant; Anand Sarup Rajiv Vij and Alok Jain, for the Respondent

Final Decision: Allowed

Judgement

Harjit Singh Bedi, J.

The present petition is directed against the order of the Appellate Authority dated April 23, 1980 under the East

Punjab Urban Rent Restriction Act, 1949 (for short the "Act") whereby the appeal filed by the respondent-tenant against the order of his eviction

passed by the Rent Controller has been allowed and the ejectment application dismissed.

2. The respondent herein was inducted into the demised premises as a tenant in the year 1962. In the year 1970, the landlord petitioners filed an

application under the Act for his ejectment on the ground that the shop in dispute had become unsafe and unfit for human habitation. This

application was dismissed by the Rent Controller and no further action appears to have been taken by the trial Court thereafter. The petitioner filed

another application in the year 1973 seeking eviction of the respondent on the ground of non-payment of rent. This too was disposed of after the

rent was tendered. The present application was, thereafter, filed praying for eviction of the tenant on the grounds of non-payment of rent, that the

shop had become unsafe and unfit for human habitation and that some structural alterations made by the respondent had materially impaired its

value and utility. On notice to the respondent, the rent as claimed was tendered and accepted without objection, but on the pleadings of the parties,

the following issues were struck:-

1. Whether the disputed shop was become unfit and unsafe for human habitation ?
2. Whether the value and utility of the shop has been materially impaired by the respondent ?
3. Whether the respondent has refused to accept the applicants as his landlord, if so, to what effect ?
4. Relief:

The Rent Controller held that the shop in dispute had become unfit and unsafe for human habitation and by erecting certain pillars to support the

roof which was admittedly in a bad shape, the respondents had materially impaired the value and utility of the premises. For arriving at this

conclusion, the Rent Controller relied very substantially on two inspection reports recorded by two different Judicial Officers one recorded by Sh.

P. Lall, Rent Controller in these very proceedings and another dated 19.9.1974, Exhibit P-3 recorded by Sh. S.K. Garg, Sub Judge in some other

proceedings between the parties. In addition to the above, the Rent Controller also relied on the statement of Shri Washir Ahmed Overseer, M.C.

Sangrur, Ex. RW2 and the statement RW/1 of Shri Hans Raj, Executive Engineer, who had inspected the premises. The matter was thereafter

taken in appeal by the respondent and the Appellate Authority upset the findings of fact recorded, solely on the ground that on a fresh inspection

made by Shri T.S. Chauhan, Sub Divisional Engineer, PWD B&R at Sangrur on 29.4.1977 who communicated his report to the Court vide letter

dated 3.5.1977, it had been found by him that at the time of inspection the condition of the shop building was safe and it was not likely to collapse.

The appellate authority also held that the efforts of the respondent to repair the shop prior to the filing of the ejectment application had been

frustrated by the petitioner by filing a Civil Suit and in that situation the petitioner could not take advantage of his own wrong and seek ejectment on

the grounds taken. The appellate authority also reversed the findings on issue No. 3 holding that the construction of pillars just close to the wall to

support the roof did not materially impair the value of the demised premises and on the contrary enhanced it, and as such allowed the appeal and

dismissed the ejectment application.

3. Mr. M.L. Sarin, Ld. Senior counsel, appearing for the petitioners", has urged that at the time when the ejectment application was filed the

building had been found to be unsafe and unfit for human habitation by the Rent Controller in these very proceedings in his inspection made on

10.2.1976 and in an earlier report of Sub Judge in another litigation between the parties on 19th September, 1974 Exhibit P3. In the first

mentioned report it had been found that the roof was likely to give in and pillars had been erected recently by the tenant to stop it from doing so. It

has also been noted that the building appeared to be more than 60 years old and had been built of nanakshahi bricks. It had also been stated that

some of the balas and the beam supporting them had been eaten up by white ants and some of the balas were sagging. It had also been mentioned

that the western wall was also in danger of falling down. Even in the report dated 19th September, 1974 the Sub Judge had observed that there

was no roof on the adjoining shop of Hari Kishan and the bifurcating wall of the rear room of the two shops was in bad shape and could fall down

at any time. It was specifically observed further that it would be unsafe if this wall was not demolished. The inspecting Court found that close to the

dilapidated wall some support had been given to the roof to stop it from falling as the wall supporting the roof appeared to be in danger. Mr. Sarin

also relied on another report Ex. P2 dated 17th November, 1974 recorded by a person stated to be an Expert, who had stated much to the same

effect. Mr. Sarin has, therefore, argued that admittedly when the ejectment application was filed it was proved beyond doubt that the building was

unsafe and unfit for human habitation. In this connection he has also urged that if the Court found as a matter of fact that during the pendency of the

appeal that the building had been repaired structurally the right which had accrued to the petitioners as the owners of the premises to secure the

eviction of the tenant could not be taken away. In this connection he has relied on Maharaj Jagat Bahadur Singh v. Badri Parshad Seth,¹ (1963)

65 P.L.R. 452 (S.C.), Jagdish Chand etc. v. Mst. Bachni Devi,² 1980 C.L.R. (C) 490, Balbir Singh v. Hari Ram,³ 1982 (2) R.L.R. 463, Krishan

Lal v. Madan Copal,⁴ 1984 (1) R.L.R. 65, Finally it has been submitted that as the report of Shri Tirath Singh Chauhan had not been proved and

the objections filed against it had not been decided by the appellate authority, it would not be read in evidence.

4. These arguments of the learned counsel for the petitioners have been controverted by Mr. Anand Swaroop, learned Senior Advocate, by urging

that subsequent events could be taken into account and the appellate authority was duty bound to find out as to the true nature and the condition of

the premises at the time of the hearing of the appeal and as the report of Shri Tirath Singh Chauhan had declared the building to be safe, the finding

of the appellate authority needed to be sustained. In support of his plea Mr. Anand Swaroop has relied on Pasupuleti Venkateswarlu Vs. The

Motor and General Traders, and Shadi Singh v. Rakha,⁶ (1992) 102 P.L.R. 163 (S.C.).

5. The primary question that arises for consideration is as to whether the condition of the building had to be determined at the time of the filing of

the ejectment application or that the subsequent event of it having been made safe during the pendency of the appeal was to be taken note of.

6. After hearing the learned counsel for the parties I find merit in this petition. In Maharaj Jagat Bahadur Singh's case (supra) the Hon'ble Judges

of the Supreme Court while considering the scope of Section 13(3)(a)(iii) of the Act observed that it was attracted only when the building was

such that the landlord required that the building be vacated by the tenant in order to carry out the work i.e. the repair needed were so extensive

and fundamental in character that they could not be carried out if the tenant remained in possession. In Jagdish Chand's case (supra) the single

Bench of this Court held that the right to eject a tenant could not be defeated by the tenant by replacing a new roof without the written consent of

the landlord. Likewise, in Balbir Singh's case (supra) Division Bench of this Court also drew a distinction between the right of a tenant to repair the

building which was envisaged u/s 12 of the Act or to permit the landlord to evict the tenant u/s 13(3) (a) (iii) in case such major structural change

were needed which could be done by the landlord alone after serving the ejectment of the tenant. The Court held as under:

Owner of a building once it becomes unsafe or unfit for human habitation, acquires a right to ask for the eviction of the tenant. The tenant cannot

negate his remedy or thwart the right by his own Act.

It was also observed that in case the building had reached a stage of utter dilapidation the landlord alone had the choice to take a decision as to

whether it was required to be restored to its original position by carrying out extensive repairs or to make a new construction in its place. It was

further held that if a structural change was required the tenant had to go but in the case of a necessary repair which was visualised u/s 12 of the

Act, the ejectment of the tenant could not be ordered, and whether the building required reconstruction or repairs (the Division Bench observed)

was a question of fact to be decided on the basis of the evidence adduced. In Krishan Lal's case (supra) too this Court observed much to the

above effect.

7. Mr. Anand Swaroop's reliance on the two judgments cited by him is to my mind misplaced. In P.V. Venkateswarlu's case (supra), the matter

arose out of ejectment proceedings in a case of personal necessity of a shop. During the pendency of the proceedings, the landlord came in to

possession of another shop with the result that the requirement of personal necessity ceased to exist. The Court observed as under:

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding.

Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to

court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot

blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure where no specific

provision or fairplay is violated, with a view to promote substantial justice-subject of course, to the absence of other disentitling factors or just

circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation

pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as

situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just

and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of

events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On

both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the

pendency of the case, has as the High Court twice pointed out a material bearing on the right to evict, in view of the inhibition written into Section

10(3) (iii) itself. We are not disposed to disturb this approach in law or finding of fact." It thus be seen that it was in the context of a case of

personal necessity that the above observations were made and the Court also took into account the principle of equity and fair play. In the case of

ejectment sought on the ground of a building having become unsafe and unfit for human habitation however this broad principle, to my mind, would

not apply and as observed by the Supreme Court the right to relief must be judged to exist as on the date the suit is filed save in the exceptional

situations envisaged in the quotation above. Even in Balbir Singh's and Krishan Lal's case, (Supra) this Court has held that the tenant could be

allowed to take away the right of a landlord to reconstruct and rebuild the premises which had become unsafe and unfit for human habitation by

making major and substantial repairs or structural alterations Mr. Anand Swaroop's reliance on Shadi Singh's case (Supra) is also not justified.

Although it is true that certain observations made by the Hon'ble Bench support the contentions advance by the learned counsel to the effect that

subsequent events could be taken into account but in this very case itself the Court observed as under:-

There is a distinction between effecting repairs and in its guise to make structural alteration or to restructure the building. The tenant cannot effect

structural alteration or reconstruct the building. It is the right of the landlord alone to exclusively have it done unless of course, the landlord having

had the tenant evicted from the building for that purpose and demolished the building and failed to reconstruct and redeliver possession thereof to

the tenant. In a given case if the tenant acts unilaterally and effects structural alterations or reconstruct the building, it itself may be a ground for

eviction under the appropriate provision of the statute.

It will therefore be seen that the Supreme Court has also accepted the view expressed by this Court that the tenant could make repairs to the

building in question but structural changes if made by the, tenant may be themselves be a ground for ejectment of the tenant. As a matter of fact,

this view is substantiated by a comparative reading of Sections 12 & 13 of the Act. It needs to be highlighted that whereas Section 12 of the Act

specially authorises a tenant to make the necessary repairs to a building other than structural alterations", the right to make structural alterations or

major repairs has been left to the landlord u/s 13(3) (iii) after seeking the ejectment of the tenant.

8. Keeping in view the broad principles laid down above, it has now to be found as a matter of fact as to whether the changes that had been

admittedly made by the tenant to make the building safe before its inspection by Sh. Tirath Singh Chauhan were in the nature of repairs or were

structural alterations. After going through the two earlier inspection reports, referred to above. There is no manner of doubt that the shop was

completely unsafe and unfit for human habitation at the time of those inspections and it does appear that after the decision of the Rent Controller

and during the pendency of the appeal the repairs that had been effected were in the nature of structural alterations and major repairs which could

not have been made by the tenant. Mr. Anand Swaroop's assertion that as a matter of fact the building still existed even today supports the case of

the tenant because the building that was in danger for falling down as far back as 1974 had been renovated in such a way, that it was still existing

shows that major structural changes were made by the tenant and that this in the light of what has been stated above, could not be done by him.

The finding on issue No. 1 is, therefore, reversed.

9. In view of my finding on issue No. 1, no discussion on issue No. 2 is required.

10. For the reasons recorded above, the present petition is allowed, the order of the appellate authority is set aside and that of the Rent Controller

restored and the ejectment application filed by the petitioner allowed with no order as to costs. The respondent is, however, granted two months

time to vacate the premises in dispute provided the entire arrears of rent due up to date are cleared and the advance rent also paid for the

subsequent two months and an undertaking filed before the Rent Controller to vacate the premises on the expiry of the aforesaid period, the entire

exercise to be undergone within 15 days from today.