

(2006) 08 P&H CK 0556

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5089 of 2005

Sudarshan Kumar

APPELLANT

Vs

Manoj Kumar and Others

RESPONDENT

Date of Decision: Aug. 11, 2006

Acts Referred:

- Constitution of India, 1950 - Article 227
- East Punjab Urban Rent Restriction Act, 1949 - Section 13, 13(3)(a)(iii)

Citation: (2007) 1 CivCC 21 : (2006) 4 RCR(Civil) 543 : (2006) 2 RCR(Rent) 428

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; Ashok Aggarwal with Mr. Vikram Aggarwal, for the Respondent

Judgement

Vinod K. Sharma, J.

The present revision petition has been filed against the order of ejectment dated 22.1.2005 passed against the petitioner by the Rent Controller, Bathinda, and affirmed by the Appellate Authority, Bathinda, vide order dated 29.8.2005.

2. Shri Lachhman Dass deceased landlord had filed the eviction petition on 12.11.1994 against the petitioner-tenant u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short the "Act") for vacation of shop comprising of two rooms, one inner floor (Miani), which is the part of building No.4713 situated in Hospital Bazar, Bathinda. It was claimed that the shop was 70 years old and was in a highly dilapidated condition as number of big cracks including vertical in nature have crept in the walls and the roof of the shop was also in badly dilapidated condition. It was further claimed therein that some portion of the first floor and second floor had fallen and the building can fall at any moment as it has outlived its life and, therefore, was not fit for human habitation. It was also claimed that a notice had also been issued by the Municipal Committee u/s 113/114 of the

Municipal Act.

3. During the pendency of the rent application Shri Lachhman Dass died and his sons namely Manoj Kumar and Vishal Kumar Goyal were pleaded as legal representatives by the Rent Controller and accordingly they filed an amended rent application and reiterated the same grounds for eviction. However, ground for personal necessity was also retained by Shri Manoj Kumar for doing business in the shop in dispute. It was further claimed that Manoj Kumar was not doing any business and wanted to start his business in the shop in dispute bona fide. It was also claimed that he had not vacated any such building or rented out any building without any sufficient cause after commencement of the Act and he was not occupying any shop/building in the urban area of Bathinda for the purpose of his business. It was also claimed that Manoj Kumar would reconstruct the building for his own use and occupation as the same has outlived its.

4. The application was contested by the tenant-petitioner herein. It was claimed that the shop in dispute was fit for human habitation. It was further claimed that it was newly constructed at the time when he was inducted therein. It was also claimed that the floor, walls and roof of the shop were in good condition and completely safe for human habitation. However, personal necessity of Shri Manoj Kumar was denied being neither genuine nor bona fide. It was also claimed that he was well settled in his village and had sufficient agricultural land and, therefore, he had no necessity to shift to Bathinda to start his business.

5. On the pleadings of the parties, the following issues were framed:-

" 1. Whether respondent is liable to be evicted from the shop in dispute on the grounds mentioned in the application? OPA

2. Whether the application is not maintainable in the present form? OPR

3. Whether the applicant is estopped from filing the application by his act and conduct?

4. Whether the application is false and frivolous and the respondent is entitled to special costs? If so to what amount? OPR

5. Relief.

6. Following two additional issues 4-A and I-A were also framed on 17.12.1996 and 6.11.2002:-

"4-A. Whether the petitioner bonafide requires the premises in question for his personal use and occupation? OPA

I-A. Whether the applicant Manoj Kumar son of late Lachhman Dass applicant requires the shop in dispute for his bonafide personal necessity? OPA"

7. The learned Rent Controller held that the building in dispute was unfit and unsafe for human habitation and that the tenant-respondent was liable to be evicted on this ground. It was also held that Manoj Kumar was entitled to eviction of the tenant from the demised premises for his personal use and occupation.

8. Shri Arun Jain, learned counsel for the petitioner by placing reliance on the judgment of this Court in Ashok Kumar and others by LRs. v. Gurcharan Singh and others o/Amritsar, 1990 HRR 80, contended that the condition of the premises in dispute has to be looked into and not the condition of the other parts of the main building for evicting a tenant on the ground that the building in dispute has become unsafe and unfit for human habitation. The contention of the learned counsel for the petitioner therefore was that the first and second floors of the building may be in dilapidated condition, however, the tenanted premises was in good shape. Therefore, the findings of the courts below could not be sustained. However, Shri Ashok Aggarwal, learned Senior Counsel, for the respondent controverted this argument by placing reliance on the Division Bench judgment of this Court in Sardarni Sampuran Kaur and another v. Sant Singh and another, 1983 HRR 152 to contend that as the portion in possession of the landlady was a part of the bigger building which had become unfit and unsafe for human habitation, merely because portion in possession of the petitioner was in a good shape, shall not be of any help to the petitioner-tenant. The Division Bench of this Court was pleased to hold as under:-

"Where the demised premises were part and parcel of a larger building, other portion of the same building in possession of the petitioner of the petitioner landlady was in dilapidated condition. Landlady sought the eviction of the tenant on the ground that the building was in dilapidated condition and as such was unfit for human habitation and that she wanted to reconstruct the building.

Held that if the substantial part of the integrated larger building has become unsafe and unfit for human habitation the tenant can be ejected from the demised premises forming part thereof u/s 13(3)(a)(iii) of the Act despite the fact that the particular portion in his occupation may not be so."

9. The learned counsel for the respondent by further placing reliance on the judgments of this Court in Sarup Chand v. Siri Chand, 2005(1) HRR 631 and Vishwa Mittar and others v. Manohar Lal Makkar, 2004(2) HRR 344 contended that the finding recorded by the courts below that the building has become unfit and unsafe for human habitation is a finding of fact based on appreciation of evidence, therefore, the same cannot be interfered with in the revisional jurisdiction.

10. In view of what has been stated above, there is no force in the contention of the learned counsel for the petitioner that it was only the demised premises which was required to be seen and not the whole building. Therefore, I find no error in exercise of the jurisdiction by the courts below in ordering ejectment of the petitioner on the

ground that the building has become unfit and unsafe of human habitation.

11. Learned counsel for the petitioner has challenged the findings of the learned Courts below on the personal necessity and contended that the statutory mandate for ordering ejectment of the ground of bonafide requirement is that the need of the landlord has to be bonafide and not merely a whim or fancy. In support of his contention, the learned counsel for the petitioner placed reliance on the judgment of the Hon"ble Supreme Court in the case of Deena Nath v. Pooran Lal, 2001 (2) RCR130. The contention of the learned counsel was that Shri Manoj Kumar, on whose behalf the building was sought for his personal necessity, had sufficient agricultural and in his village and, therefore, his need for starting a business in the demised premises cannot be held to be bonafide. This argument has been considered by the courts below and a finding has been recorded that agriculture is such a profession which can be done without the help of a land-owner. The learned courts below took note of the fact that other brothers of Manoj Kumar namely Ganga Ram and Vishal Kumar were also owners in equal shares of agricultural land, but they were cultivating their land by doing their respective service simultaneously. Therefore, the bonafide requirement of Manoj Kumar could not be doubted. Both the courts below have recorded a concurrent finding of fact that the landlord required the demised premises for his own use and occupation and his need was bonafide. Nothing has been shown as to how this contention can be said to be perverse or contrary to the evidence on record which may call for interference by this Court under Article 227 of the Constitution of India. Therefore, the findings recorded by the learned courts below on this ground are affirmed. Thus, finding no merit in the present revision petition, the same is hereby dismissed.

12. Learned counsel for the petitioner lastly contended that the building being commercial in nature, the tenant-petitioner be given a reasonable time to vacate the demised premises. This request of the counsel being genuine deserves to be accepted and accordingly the petitioner-tenant is hereby given six months" time to vacate the premises in dispute subject to the condition that he shall within six weeks of the passing of this order file an undertaking in this court to the following effect:-

(i) That he is in exclusive possession of the premises in dispute and he shall hand-over its exclusive possession to the landlord-respondent on the expiry of six months;

(ii) That he shall clear all the arrears of rent due and continue to pay the rent for this period in advance by 10th of each month.

13. In case the requisite undertaking is not filed within the stipulated period, it would be open to the landlord-respondent to execute the eviction order in accordance with law.