

Sham Lal Vs Rama Sharma

Court: High Court of Himachal Pradesh

Date of Decision: Oct. 9, 2015

Acts Referred: Himachal Pradesh Urban Rent Control Act, 1987 - Section 14(2)(i), 14(2)(iii), 14(3)(a)(i), 24(5)

Citation: (2015) 2 RCR(Rent) 586

Hon'ble Judges: Sanjay Karol, J

Bench: Single Bench

Advocate: B.B. Vaid, for the Appellant; G.C. Gupta, Senior Advocate and Meera Devi, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Karol, J

Against the concurrent findings of fact, petitioner Sham Lal (dead and now represented through LRs), hereinafter referred

to as the tenant, against whom order of eviction stands passed, has filed the present statutory petition, under the provisions of Section 24(5) of the

H.P. Urban Rent Control Act, 1987 (hereinafter referred to as the Act).

2. Power of revision, exercised by this Court, cannot be equated with appellate jurisdiction, unless there is perversity in the matter of appreciation

of evidence or the authorities below have arrived at a conclusion, which no reasonable person will arrive at, this Court would not interfere and re-

appreciate the evidence on the asking of tenant. In the instant case, no such perversity emerges from record.

3. The Courts/authorities below concurrently have ordered eviction of the tenant, on the statutory ground of (a) non-payment of rent, (b) bonafide

requirement of the landlady (respondent herein) as also her family members, (c) impaired the value and utility of the premises, by unauthorizedly

carrying out additions and alterations.

4. Regretfully, despite serious endeavour made by this Court, parties could not arrive at any settlement. Through their learned counsel, they were

apprised of their statutory rights of resorting to ADR Mechanism, very much in place and operational in this Court.

5. Before this Court, tenant has moved an application, seeking appointment of a Local Commissioner, for getting whole of the building owned by

the landlady, physically inspected. According to the tenant, landlady has sufficient accommodation to meet her family requirement. At the threshold,

the application is dismissed, for the reason that tenant had sufficient opportunities of leading evidence before the authorities below, which he failed

to do so. Even otherwise, this Court would not come to the aid of a party for collecting evidence.

6. Despite limited scope of enquiry, which this court can dwell upon, for adjudging perversity, if any, in the orders passed by the authorities below,

additional factors, which the tenant wants the Court to believe, stand considered, in adjudicating the present petition.

7. On 31.7.2001, when the petition for ejectment was filed, under Sections 14(2)(i), 14(2)(iii) and 14(3)(a)(i) of the Act, landlady was just having

two rooms, one kitchen, one bathroom, one latrine and one store, as total accommodation under her occupation. At that time, her family consisted

of herself, her husband, two daughters (one of whom was unmarried-aged 19 years) and one unmarried son (aged 16 years).

8. Being owner of the building, wherein the tenanted premises are situate, simultaneously, she initiated proceedings for ejectment against all the

tenants. In effect, her bonafide requirement would have met only with the ejectment of all the tenants occupying the building.

9. Relying upon the testimonies of the landlady Smt. Rama Sharma (PW-1), Shri Dalip Singh (PW-2), Ms. Seema Sharma (PW-3) and Shri Hem

Raj (PW-6), the authorities below have come to the conclusion that the premises under occupation of the landlady is insufficient to meet her

bonafide requirement.

10. Also, relying upon the testimonies of Smt. Rama Sharma and expert Shri Vivek Karol (PW-4), who has proved report (Ex. PW-4/A) and

spot map (Ex. PW-4/B), the authorities have also found the tenant to have impaired the value and utility of the building by unauthorizedly fixing

almirahs and shelves in the walls, after breaking open the bathroom and making holes in the walls. Also, two water tanks of the capacity of 1000

litres and 1500 litres stand installed, putting an extra load over the building. Report of an expert, so produced by the tenant, remains unproven on

record and testimony of tenant (RW-1), refuting such allegations of the landlady, was found to be not worthy of credence on all counts.

11. That the building in question is situate within the municipal limits of Shimla, is an old structure, stand proved through the testimony of Smt.

Rama Sharma and Shri Vivek Karol. It is not disputed before this Court that though in the year 2001, landlady was in occupation of only two

rooms, but however, with the passage of time, tenants Shri Onkar Singh and Shri Kuldeep Singh having vacated the premises under their

occupation, giving the landlady three additional rooms (two rooms vacated by Shri Onkar Singh and one room vacated by Shri Kuldeep Singh).

Also, during the pendency of the present petition, tenant Shri Sodhi Ram has vacated two rooms, under his occupation. Present tenant is the only

other tenant left in the building.

12. Perusal of the floor plan of the entire building, which is part of the record, reveals that the landlady is in occupation of three rooms, gallery, one

kitchen, one bathroom, one latrine on the first floor; six rooms, three kitchens, one bathroom and one latrine on the ground floor and two rooms,

one bathroom and one latrine on the basement.

13. On the other hand, tenant is in occupation of two rooms, one latrine, one bathroom and one kitchen.

14. Even though the number of rooms under occupation of the landlady is more, but they are small in size. Out of ten rooms, there are only three

rooms, which can be used as proper bedrooms and one out of them is totally damaged and unsuitable, on account of permanent seepage of water

from the retaining wall. The other rooms are as small as 5"x9", 8"x9", 10"x7", 9"x8" and 8"x8". The building in question is an old structure. Also,

passage to some of these rooms is through the other rooms, in effect marginally reducing full utility and usage thereof. Noticeably, on the first floor,

there are three rooms, but then the passage to the last room is through the first two rooms. So, in effect only one, out of three, can be used as a

bed room. Thus, in effect, only leaving three, out of ten, to be used as bed rooms by the landlady and her family. One bed room is required by the

landlady, one for her son and another one for the guests. Shimla is a Capital city, where inflow of guests all throughout the year is there. With the

addition of two rooms under occupation of the tenant, bonafide requirement would be met.

15. It is a settled principle of law that bonafide requirement of the landlady of the demised premises, for own use and occupation, has to be seen

and adjudged from her point of view and not that of the tenant, who cannot be allowed to dictate terms, with regard to suitability of the

accommodation. However, sufficiency, adequacy and requirement of accommodation need to be proved by the landlady. (See: Mrs. Meenal

Eknath Kshirsagar Vs. M/s. Traders and Agencies and another, (1996) 5 AD 606 : AIR 1997 SC 59 : (1996) 6 JT 468 : (1996) 5 SCALE 302 :

(1996) 5 SCC 344 : (1996) 3 SCR 466 Supp : (1996) 2 UJ 703 : (1996) AIRSCW 4211 : (1996) 5 Supreme 635 ; Shiv Sarup Gupta Vs. Dr.

Mahesh Chand Gupta, AIR 1999 SC 2507 : (1999) 5 JT 201 : (1999) 4 SCALE 334 : (1999) 6 SCC 222 : (1999) 3 SCR 1260 : (1999) 2 UJ

1261 : (1999) AIRSCW 2666 : (1999) 6 Supreme 330 ; Ragavendra Kumar Vs. Firm Prem Machinery and Co., AIR 2000 SC 534 : (2000) 1

JT 61 : (2000) 1 SCALE 49(2) : (2000) 1 SCALE 49 : (2000) 1 SCC 679 : (2000) 1 SCR 77 : (2000) AIRSCW 66 : (2000) 1 Supreme 48 ;

M.L. Prabhakar Vs. Rajiv Singal, AIR 2001 SC 522 : (2001) 1 JT 223 : (2001) 1 SCALE 54 : (2001) AIRSCW 129 : (2001) 1 Supreme 138 ;

Siddalingamma and Another Vs. Mamtha Shenoy, AIR 2001 SC 2896 : (2001) 9 JT 268 : (2001) 7 SCALE 345 : (2001) 8 SCC 561 : (2001)

AIRSCW 4345 : (2001) 7 Supreme 870 ; Joginder Pal Vs. Naval Kishore Behal, AIR 2002 SC 2256 : (2002) 1 JT 219 Supp : (2002) 2 PLR

625 : (2002) 4 SCALE 560 : (2002) 5 SCC 397 : (2002) 3 SCR 1078 : (2002) AIRSCW 2374 : (2002) 4 Supreme 280 ; Savitri Sahay Vs.

Sachidanand Prasad, AIR 2003 SC 156 : (2002) 8 JT 601 : (2002) 8 SCC 765 : (2002) 2 UJ 1531 ; Akhileshwar Kumar and Others Vs.

Mustaqim and Others, AIR 2003 SC 532 : (2002) 10 JT 203 : (2003) 1 SCC 462 : (2002) 5 SCR 57 Supp : (2003) 1 UJ 73 ; Pratap Rai

Tanwani and Another Vs. Uttam Chand and Another, (2004) 7 JT 366 : (2004) 7 SCALE 631 : (2004) 8 SCC 490 ; Kailash Chand and

Another Vs. Dharam Das, AIR 2005 SC 2362 : (2005) 5 JT 139 : (2005) 5 SCC 375 : (2005) 3 SCR 1182 ; and Dinesh Kumar Vs. Yusuf Ali,

AIR 2010 SC 2679 : (2010) 5 JT 543 : (2010) 6 SCALE 41 : (2010) 12 SCC 740 : (2010) 6 UJ 2847 : (2010) AIRSCW 3605 : (2010) 4

Supreme 481).

16. It stands proven on record that out of two rooms, initially in her possession, one was totally unusable.

17. Primarily, family of the landlady consists of herself, her husband, one son of marriageable age, who cannot be married till and such time,

additional accommodation, so occupied by the tenant, is vacated. During the subsistence of the petition, though the second daughter of the

landlady has married, but however, like her elder sister, she is continuing to occupy the room in the house.

18. Submission made on behalf of the tenant that with the daughters having gone to their matrimonial house, they have no right, even to visit their

mother or continue to occupy the rooms, which they were doing as maidens, only merits rejection. If the parents so desire, even with the marriage

having been solemnized, a daughter would still have a right to visit and continue to use and occupy the premises. Attempt made by the tenant to

establish that married daughters are happily residing in their matrimonial houses, stands repelled by the authorities below. Under these

circumstances, can it be said that a daughter ceases to be member of the family for the purpose of bonafide requirement under the provisions of the

Act? In my considered view, in the given fact situation, no, particularly when there is no evidence to establish that married daughters are residing in

their own accommodation in the same town, which in any event is not the proven case on hand. It is the specific case of the landlady that her

daughters have occupied part of the accommodation now available with her. In any event, regardless of such fact, assuming the daughters are not

residing or occupying the accommodation, even then the tenanted premises are required by her. Even otherwise, entire usable accommodation

available with the landlady would be just three bedrooms, which, in any event, would be required by her, for she has a growing family.

19. In view of the aforesaid discussion, it cannot be said that even with the other tenants having vacated the premises, bonafide requirement of the

landlady ceases to exist.

20. On behalf of the tenant, it is further contended that the landlady concealed vital information from the Court, as such, ejectment petition ought to

have been rejected on that ground. According to the tenant, landlady suppressed vital information of being possessed with another room. Specific

attention is drawn to the pleadings and the admissions made by the witnesses with regard thereto.

21. It is true that in the ejectment petition, there is no reference of this additional room, but then it stands clarified by Smt. Rama Sharma and Ms.

Seema Sharma, as also other witnesses that this accommodation, which is stated to be an additional room, is actually a shed (Dhara) and an

outhouse. Mr. B.B. Vaid, learned counsel for the tenant, invites attention to that part of the statement of the witnesses, wherein it is admitted that

the Dhara has concrete walls from inside. The question, which needs to be considered, is as to whether landlady can be asked to occupy the same,

befitting her status and requirement, for (1) this Dhara is not authorized; (2) it is an outhouse and not part of the main building; (3) it has got no

kitchen and latrine; (4) even with this Dhara requirement of the landlady cannot be met. It was not required to be pleaded by the landlady, for the

same was not put to use for residential purposes by the family. Hence, contention only merits rejection.

22. On the question of impairment of the value and utility of the premises, it is contended on behalf of the tenant that in the testimony of the

landlady and the expert, it has nowhere come that there is material impairment. The word "material" is missing, but then the witnesses have

unambiguously and categorically explained as to how the value and utility stand impaired, which the Courts have found to be material. An old

building burdened with weight only makes the roof sagging and seepage of water further damages the property, making part of it unsuable.

Breaking of a bathroom and puncturing the walls of an old structure, cumulatively put, does impair the value and utility of the building and more

particularly that of the tenanted premises. Before this Court, it is not the case of the tenant that such alterations were carried out with the

authorization of the landlady.

23. Landlady is a Government servant. Her son-in-law is a doctor, her son is aged 36 years and is to be married.
Status, style of living and habits

are the factors which need to be considered while considering the bonafide requirement. The findings returned, cannot be said to be perverse or

arbitrary, warranting interference, in any manner.

24. Learned counsel for the parties have referred to and relied upon the following judgments of the Hon'ble Supreme Court of India and various

High Courts: Basayya I. Mathad Vs. Rudrayya S. Mathad and Others, AIR 2008 SC 1108 : (2008) 2 CLT 64 : (2008) 1 CTC 537 : (2008) 3

JT 438 : (2008) 1 SCALE 698 : (2008) 3 SCC 120 : (2008) AIRSCW 944 ; Ajit Singh and Another Vs. Jit Ram and Another, AIR 2009 SC

199 : (2008) 152 PLR 740 : (2008) 12 SCALE 556 : (2008) 9 SCC 699 : (2008) 2 UJ 1303 ; Union of India (UOI) and Others Vs. Flight

Cadet Ashish Rai, AIR 2006 SC 1243 : (2006) 108 FLR 855 : (2006) 1 JT 423 : (2006) 1 SCALE 339 : (2006) 2 SCC 364 : (2006)

SCC(L&S) 312 : (2006) 1 SCR 457 : (2006) 2 SLJ 186 : (2006) AIRSCW 443 : (2006) 1 Supreme 271 ; Hari Singh Vs. Kanhaiya Lal, AIR

1999 SC 3325 : (1999) 6 JT 489 : (1999) 5 SCALE 381 : (1999) 7 SCC 288 : (1999) 2 SCR 216 Supp : (1999) 2 UJ 1488 : (1999)

AIRSCW 3318 : (1999) 8 Supreme 19 ; Gurbachan Singh and another Vs. Shivalak Rubber Industries and others, (1996) 2 AD 446 : AIR 1996

SC 3057 : (1996) 2 JT 615 : (1996) 113 PLR 694 : (1996) 2 SCALE 431 : (1996) 2 SCC 626 : (1996) 2 SCR 997 ; Dev Kumar (Died)

through LR's. Vs. Smt. Swaran Lata and others, AIR 1996 SC 510 : AIR 1995 SC 510 : (1995) 9 JT 331 : (1996) 113 PLR 391 : (1995) 6

SCALE 316 : (1996) 1 SCC 25 : (1995) 5 SCR 89 Supp ; Vipin Kumar Vs. Roshan Lal Anand and Others, (1993) 3 JT 171 : (1993) 104 PLR

349 : (1993) 2 SCALE 456 : (1993) 2 SCC 614 : (1993) 2 SCR 640 ; Prithi Chand v. Smt. Naura Devi and others, 2012(2) Him LJ 997 ;

Jodha Ram v. Rahul Chauhan and others, Latest HLJ 2008(HP) 1425 ; Himachal Pradesh Congress Committee (I) Vs. Salig Ram Nand Kishore,

(2003) 1 ShimLC 268 ; Mohan Lal Aggarwal Vs. Kali Ram, (1997) 2 ShimLC 508 ; Ashok Kumar and Others Vs. Uttam Chand, (1995) 2 ILR

HP 1563 ; Sohan Lal Khanna v. Amar Singh, 2000(2) RLR 664 (HP) ; Radha Krishan Vs. Amar Singh, (1999) 123 PLR 360 ; M/s. Mohan Lal

Ashok Raj v. Lajwanti Devi and others, 1997(2) RLR 197 (HP); Subash v. Smt. Ganga Devi, 1996(2) RLR 519 (HP); and Gazanafarali Fatehali

Hakim v. Ratilal Manganlal Panchal, 1999(2) RLR 442 (Gujarat). This is only reflective of their industry, but in no manner, advances the case of

the tenant.

25. There is no challenge to the findings with regard to the arrears of rent.

Petition stands dismissed. Pending application(s), if any, also stand disposed of.