

Markar Masih - Petitioner @HASH Smt. Padma Sahni

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 31, 2016

Acts Referred: Himachal Pradesh Urban Rent Control Act, 1987 - Section 14

Citation: (2017) 1 CivCC 843 : (2016) 4 HimLR 2555 : (2016) 2 RCRRent 660 : (2017) 1 RentLR 13

Hon'ble Judges: Rajiv Sharma, J.

Bench: Single Bench

Advocate: Bhupender Gupta, Senior Advocate with Neeraj Gupta, Advocates, for the Petitioner; K.D. Sood, Senior Advocate with Rajnish K. Lal, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sharma, J. - This civil revision petition has been filed against Judgment dated 30.10.2007 rendered by the Appellate Authority Solan,

District Solan, Himachal Pradesh in Rent Appeal N. 22-S/14 of 2006.

2. ""Key facts"" necessary for the adjudication of the present civil revision petition are that the respondent-landlady (hereinafter referred to as

"landlady" for convenience sake) instituted a petition under Section 14 of the Himachal Pradesh Urban Rent Control Act, against the petitioner-

tenant (hereinafter referred to as "tenant" for convenience sake) for his eviction from the premises situate on Rajgarh Road, which is stated to be a

shop i.e. non-residential and used by the tenant for the sale of meat. Eviction of the tenant has been sought on the ground that he has not paid rent

since October, 2001 at the rate of Rs. 335/- per month. Other ground taken in the petition was that the tenant without the permission of the

landlady and without the permission of the Rent Controller, 10 days prior to the filing of the petition, has done material alterations and illegal acts,

which have impaired the value and utility of the shop in question. Tenant has constructed room by raising one partition wall made of bricks and

cement inside the shop and has made two rooms of the shop. It is further alleged that the tenant had created big holes in main walls and

raised/constructed huge RCC shelves and inserted three heavy iron bars in the holes so as to construct these shelves by adding extra load on the

walls. It is further alleged that the tenant has also constructed a hose (Khurli) below the retaining wall inside the shop and retaining wall has become

dangerous and can fall at any time. Tenant has also raised one poultry house made of iron bars by permanently welding the same with the main

shutter frame of the demised premises and thus the value and utility of the premises has been diminished. He has also changed the user and created

nuisance.

3. Reply was filed by the tenant. According to the tenant, rent upto 31.1.2001 stood already paid and rent upto 30.10.2002 was sent to the

landlady. It was denied that any material alterations and illegal acts have been done by him impairing the value and utility of the shop. No room has

been constructed by the petitioner. Shop was already partitioned at the time when it was rented out in the year 1981. No holes have been dug in

the walls. No Khurli has been constructed. It was denied that any permanent poultry house of iron bars has been raised by the tenant.

4. Issues were framed by the learned Rent Controller on 13.12.2004. He allowed the petition on 31.8.2006 and ordered eviction of the tenant by

holding him to be in arrears of rent @ Rs. 335/- per month from 1.10.2004 till the date of order. It was also held that the tenant has materially

impaired the utility and value of the demised premise and he was ordered to be evicted on this ground also. Tenant filed an appeal before the

Appellate Authority. The appellate authority also dismissed the appeal on 30.10.2007. Hence, this civil revision.

5. Mr. Bhupender Gupta, learned Senior Advocate has vehemently argued that his client has not impaired the utility and value of the shop in

question. According to him, no permanent structures have been raised by his client.

6. Mr. K.D. Sood, learned Senior Advocate has supported the order and judgment passed by the authorities below.

7. I have heard the learned counsel for the parties and also gone through the record carefully.

8. Landlady has appeared as PW-1. She has led her evidence by filing affidavit. According to the averments made in the affidavit tenant without

her consent has constructed a water tank and also constructed partition wall. He has also raised two platforms. He has also dug holes in the ceiling.

He has constructed two cages to keep the poultry. Structures are permanent in nature. Permanent structures have damaged the premises. She has

shown the premises to an Engineer. She has placed on record report Mark 1 and Map Mark 2.

9. PW-2 Jagmohan Suri has also led his evidence by filing affidavit. It is averred in the affidavit that he has gone to the shop in the month of

December 2001. Tenant was constructing water tank and partition wall. It was on the verge of completion. He has also raised two platforms.

10. PW-3 R.P. Swami has also led his evidence by filing affidavit. According to the averments made in the affidavit, he has retired in 1994 as

Junior Engineer from Irrigation & Public Health Department. He has done civil engineering diploma from Sundernagar in the year 1962. He has got

many buildings constructed in his tenure. He has inspected the shop on 2.1.2005. He has proved report Ext P2 and site plan Ext P3. He has also

averred that the value and utility of the building was impaired by the construction raised by the tenant.

11. PW-4 Om Parkash Sahni has also corroborated the statement of PW-1 Smt. Padma Sahni about the manner in which tenant has partitioned

the shop, constructed water tank and has also inserted holes in the walls.

12. Tenant has appeared as RW-1. He has also placed on record photographs. It is averred in the affidavit that the shop was already partitioned

into two parts. He has not done any alteration or addition. He has not caused damage to the shop. He has not constructed any water tank. In his

cross-examination, he has admitted that the shop is 20 feet in length and 10 feet in width. He has admitted that he has constructed shelves made of

bricks, cement and granite inside the shop without the consent of the landlady. He has also hanged one weighing scale with the walls. He admitted

that he has inserted a bolt of 4 inches inside the wall and the hook with which the weighing scale was hanging. He further admitted that he has made

hole in the roof of the shop and exposed the iron bars of lintel for hanging the goat. He has constructed shelves inside the shop made of marble. He

has also inserted one iron pipe in the wall.

13. RW-2 Nand Lal deposed that he used to purchase meat from the tenant. However, in his cross-examination, he testified that he was a

vegetarian. He admitted that the partition wall was raised from the floor upto lintel, however, it was not plastered.

14. RW-3 Bhag Singh deposed that he used to purchase meat from the petitioner. He has also admitted that the partition wall was touching lintel

though it was not plastered.

15. Premises were visited by PW-3 RP Swami. He prepared map Ext. P3. As per the report, cages were kept inside the shop. These are welded

with the shutter. He has also made minutest details of the additions carried out inside the shop like construction of water tank and construction of

platforms. Landlady has duly proved that the partition was constructed by the tenant after the premises were rented to him. Tenant has made holes

in the wall. He has also exposed iron bars of lintel in order to hang weighing scale. Tenant has categorically admitted that he has made additions

and alterations without the consent of the landlady. Nature of the construction raised by the tenant is permanent and these are not removable. In

the event of permanent structures being removed, it is bound to damage the premises. Construction of permanent structures inside the shop has

definitely impaired the value and utility of the premises. Construction raised by the tenant can not be termed as temporary additions and alterations.

Construction raised by the petitioner has substantially changed the character, form and structure of the building. Permanent construction is bound to

make changes in the premises on permanent basis. Damage by inserting iron rods would be caused to walls. Partition is by brick wall and it is upto

the lintel.

16. There is neither any illegality nor perversity in the Judgment passed by the appellate authority below as well as the order passed by the Rent

Controller.

17. Accordingly, there is no merit in the present petition and the same is dismissed. Pending applications, if any, are disposed of. However, in the

interests of justice, tenant is directed to vacate the premises within a period of three months from the date of this judgment and to pay use and

occupation charges to the landlady, within a period of same period.