

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No. 5978 of 2001

Reserved on: 28.01.2015

Date of decision: 13.02.2015

State of Punjab through Secretary and others

....Petitioner(s)

Versus

Kamla Rani

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Ashwani Talwar, Addl. A.G., Punjab,
and Mr. S.K. Vashisht, AAG, Punjab,
for the petitioner.

Mr. S.S. Ranghi, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

Challenge in the present revision petition filed by the State is to the ejectment order dated 07.08.1996 passed by the Rent Controller on the ground of impairment of value and utility of the building under issue no. 2. The said finding has been upheld by the Appellate Authority on 12.09.2001.

The petition for eviction was filed by Kamla Rani who died during the pendency of the present case and her legal representatives have been brought on record. The property in dispute is Bungalow No. 8 situated at Albert Road, Jalandhar Cantt., boundaries of which were given in the ejectment application and is flanked by Bungalow Nos. 5 and 7 on the eastern and southern sides. The property was leased out at ₹150 by Jugal Kishore, husband of the deceased-landlady and proprietor of M/s. Laxman Dass Jugal Kishore to the Deputy Inspector General of Police, Jalandhar.

The ground for eviction was arrears of rent from July 1986, additions and

alterations made in the premises in dispute which has materially altered and diminished the value and utility of the premises. The building becoming unfit and unsafe and premises being required for personal use and occupation.

In the written statement, the plea taken by respondent no. 4 was that the rent had been accepted upto the month of June, 1987 and the original owner had given his consent to carry out the repairs at government expenses. Huge amounts had been spent after seeking government sanction and the property was being used for the purpose it was requisitioned. No new construction had been raised and the factum of requirement of personal use and occupation was denied as the landlady was residing in a palatial building.

Replication was filed by the landlady denying the allegations and during the pendency of the case, an application dated 14.12.1987 was filed for allowing the building engineer namely Sh. D.K. Vig to inspect the property and to submit a report on account of the fact that additions and alterations had been made causing material damage to the property.

The said application was resisted on the ground that due to security reasons, private persons could not be allowed to inspect the premises apart from denying that any material alteration had been done. Since the Rent Controller permitted the landlady to inspect the premises, the original rent petition was got amended by specifically adding the factum of alterations which had been made by the petitioner-State. It was mentioned that they had bifurcated the whole of the building by constructing 9 inches wall having a height of 5 ft. 9 inches from the front wall of the building and had divided it into an irregular shape. The office and guard room had been

constructed adjoining the front gate of the house in question including a wireless room and bath rooms without the written consent of the landlady. The State denied the factum of the wall and submitted that an old wall had been repaired keeping in view the security requirements and that temporary accommodation of tents had been provided for police *jawans* deployed for security duties in the office-cum-residence of the respondent. No new bathrooms or latrines had been constructed but only minor repairs had been carried out with the consent of Sh. Jugal Kishore and his son Lajpat Rai. On the basis of the pleadings, the following issues were framed:-

“1. Whether the tender made in the present case is legal and valid. OPD.

2. Whether the respondents have made material additions and alterations in the demised premises and thereby diminished the value and utility of the demised premises. OPP.

3. Whether portion of the demised premises has become unsafe and unfit for human habitation. OPP.

4. Whether respondents no. 1 to 3 have sublet the demised premises in favour of respondent No. 4, if so, without the consent of the petitioner? OPP.

5. Whether the petitioner requires the demised premises bonafidely for the personal use and occupation? OPP

6. Whether the petitioner has no locus standi to file the present petition? OPR.

7. Whether the petition is barred by misjoinder of necessary parties? OPR

8. Relief.”

The petitioner examined the draftsman Sh. Brij Bhushan of the Cantonment Board, Jalandhar Cantt., who proved the site plan Ex.P-1 and

Dalip Kumar Vig, Architect as AW-2, who proved his report as Ex.AW-2/1 and site plan AW-2/2 whereas she herself stepped into the witness box as AW-3 and also examined one Rajinder Prashad as AW-4.

The State in order to rebut the case of the landlady examined Sh. Sham Sunder Arora, Sub Divisional Clerk, Office of PWD, Jalandhar Cantt. and placed on record site plan DW-1/4, which was got proved from RW-2 Randhir Singh, Sr. Asstt., DIG Office, Jalandhar.

Issue No. 1 was decided in favour of the tenants on account of the tender made, which was held to be legal and valid. Issue nos. 3 and 4 regarding the premises becoming unfit and unsafe and the issue of subletting to the offices concerned were decided against the landlady alongwith the issue that she required the premises for her own use and occupation. However, issue no. 2 regarding the material alterations and the locus standi under issue no. 6 were decided in favour of the landlady whereas issue no. 7 was not pressed.

The Rent Controller came to the conclusion that the property had been divided into two parts in view of the construction of the brick wall with mortar and cement. A time office, bearer room/barrier room and guard room were newly constructed. Both rooms had also been newly constructed and there was no proper sewerage disposal and wireless room had been constructed by constructing a wall of 8 ft. by dividing into two parts. Accordingly, it was held that substantial change in the character of the building had taken place. The statement of RW-1 Sham Sunder Arora, Clerk was taken into consideration and a finding was recorded that he could not depose whether the said constructions shown in Ex.DW-1/A were there at the time of inception of the tenancy and there was no written consent of

the landlord on file and, therefore, the same had been withheld by the tenants. No gazetted officer had stepped into the witness box to depose as to when the construction was raised and the report Ex.AW-2/1 was accepted. Similar report of the Local Commissioner, the Advocate Devinder Raj Seth was also taken into consideration to hold that constructions beyond what had been sanctioned by the Jalandhar Cantonment Board had been raised, which were new and, therefore, from the point of view of the landlord, there was impairment and the total outlook of the building had been changed. Accordingly, the Rent Controller passed the order of eviction.

The petitioner filed an appeal before the Appellate Authority, who noticed that the nature of construction whereby the change in the property had to be taken into account and the value and utility of the premises which had been impaired had to be seen from the point of the view of the landlord. The pleadings were taken into consideration that the respondent had taken a specific stand that there were no additions or alterations and only tented accommodation had been provided to the security staff. The statement of Sham Sunder Arora, the Sub Divisional Clerk, who deposed that the site plan of the building and the measurements were taken at the time of taking the premises on rent and that he was not sure if the construction raised was in existence at that time. However, the Senior Assistant RW-2 had denied the existence of any time office, guard room and wireless room. However, the existence of the wall was admitted. Accordingly, keeping in view the statement of the witness Dalip Kumar Vig, the Architect AW-2, a finding was recorded that constructions had been raised at the spot and the wall existed as shown in the site plan which

is more than 200' long and was 5' and 9" in height. The factum of the time office at the gate, the guard room, wireless rooms and the bath rooms were held to have been made by digging foundations as they could not have stood the vagaries of weather. It was noticed that admittedly, the construction had been raised since the State itself had filed an application to lead additional evidence that the said construction was temporary and had been removed since the conditions in Punjab had normalized and premises had been restored. Thus, the Appellate Authority held that even if the construction had been removed, that would not take away the right of the landlord to seek ejectment on the said ground. It was held that it was not such a subsequent event which could be looked into and accordingly, the eviction order was upheld. Resultantly, the present revision petition has been filed.

Counsel for the State has argued on similar lines that the rooms had been removed and merely the construction of the wall would not be an material impairment as such.

The report of the Architect dated 23.09.1992 Ex.PW2/1, who inspected the premises on 26.10.1991, 07.11.1991 and 08.04.1992 would go on to show that there is no dispute regarding the construction of the wall which was in a diagonal direction and had changed the shape of the plot restricting the movements from one part to the other. The time office, barrier room and guard room were stated to be serious violations of the bylaws of the Cantonment Board as the construction was beyond the building line. Both the rooms had been constructed without any proper sewerage disposal giving an ugly look to the building which had been attached to the barrier rooms and wireless rooms. It was also noticed that the construction had been raised in the residential area and renovations had

been done like providing cement, concrete floor, providing of tiles and marbles in the bath rooms. The cement plastering done with oil paint was stated to have been different from the original constructions and the joinery works also looked to have been repaired and replaced comparing it with the construction which was 50-60 years old. The same reads as under:-

“I noticed the following additions alterations made in the premises. The plan of the premises, measurements of which were taken by me is attached:-

There is divided wall constructed 9” thick, , 5” 9' in height as marked red in the plan laid with bricks with mud mortar with cement pointed. This wall seems to be constructed to separate the residential portion and the office area. By constructing this wall, the plot not legible building is constructed has been divided in the parts in irregular shapes (shown in the plan) because the wall constructed is not in a straight line but in diagonal direction, this alteration changed the shape of the plot restricting the movements from one part to the other part, this alteration made has reduced the value and utility of the building considerably.

Time office & barrier room & guard room

The construction of time office at the entrance as shown:-

- 1. In the plan is highly objectionable since it is in serious violation of the bye-laws of the Cantt. Board, since construction of this is beyond the building line.*
- 2. Barrier room with wooden leg has been constructed which has restricted the entry and has reduced the value and utility of the building considerably.*
- 3. Construction of the guard room along the divide wall has impaired the elevation of the existing structure.*

4. Wireless rooms

This room has been divided into two parts by constructing a wall Ht. 8'-0" as shown red in the plan, by constructing this wall material alteration has been done which has impaired its value and utility.

Bathrooms

This construction also seems to have been done recently as the specifications of it differs with the original construction. There is no proper sewerage disposal which has given a ugly look spoiling the atmosphere in turn has impaired the value of the property under dispute.

Office Area

Construction Specifications

Walls : Brick work with standard sized and Nanakshahi bricks laid with mud mortar, girder ballies and tiles

Roofing : Girder, ballies & tiles

Flooring : Brick flooring & cement concrete flooring.

Joindery : Wooden doors & windows

Roofs ballies are damaged due to white ants, flooring is settled at many places, wooden joinery is also damaged & requires replacements.

There are cracks along the width of walls (as shown in the plan) which have developed due to loss of strength in the walls and it has further weakened its load bearing capacity and also dampness was noticed on the walls rendering the structure unsafe for use.

Residence with Office of the DIG

Residential area was inspected where the residence and the office of the DIG is located. This area is cut off from the rest of the portion of the property. The residence consists of bed-rooms 8 Nos., kitchen

bathrooms 2 Nos., verandha 2 Nos.

Construction Specification

Walls : B.B. in mud mortar 13-1/2" thick.

Finishing : Cement plaster & Oil paints on walls.

Flooring : C.C. Flooring

Joinery : Soft wood for joinery

Roofing : Tiles, angle iron, wooden ballies.

Construction specifications and visual inspection shows that the portion is constructed about 50 to 60 years back. Renovations have been done like providing cement concrete flooring, providing tiles & marble in bathrooms & walls are cement plastered & oil paints. These alterations are evident to have been done because its specifications differ with original construction, roof laid at height 15' which was prevalent about 50 to 60 years, joinery works also looks to have been repaired & replaced.

On the above stated facts & as per inspection of the premises in dispute in my opinion material additions & alterations & alterations have been done as stated above has seriously impaired the value & utility of the premises, also since the structure has outlived its life, it is not fit for human habitation."

Thus, it is apparent that the findings recorded would go on to show that since a senior officer of the police was occupying the premises in question and major renovation had been carried out by the State without the consent of the landlord. The original landlady also stepped into the witness box, who deposed that the changes were made without her written consent and the original site plan had been sanctioned by the Cantonment Board of Jalandhar Cantt. It is settled principle that the material impairment of the value and utility of the building has to be seen from the context of the

landlord and not of the tenant. Merely because one of the major construction raised is a long wall, State cannot contend that it would not materially impair the building. The length and the height of the wall has been examined by the Courts below. The fact that the plot has been bifurcated and approach from one portion to the other has been cut off would be sufficient to hold that there is material impairment. The report of the building expert has also been adverted to in detail, as noticed above.

In ***Vipin Kumar vs. Roshan Lal Anand, 1993 (2) SCC 614***, the Apex Court held that where on account of construction of a wall and putting up the door the flow of the light and air had been stopped, it was sufficient to hold that there is material impairment. The word impair was held not to have any fixed meaning for relative term and where the rented land or building's value had been diminished by making construction in a hap hazard manner. It was held by the Apex Court in ***Gurbachan Singh and another vs. Shivalik Rubber Industries, 1996 (2) SCC 626*** that the same would give the landlord a right of eviction. The argument raised that the temporary construction has been removed and would take away the ground for eviction was rejected by this Court on the ground that the petition would be rendered infructuous by taking this plea. Reference can be made to the judgment in ***M/s. Goyal Steel Industries and others vs. Sangram Singh Sandhawalia and others, 2005 (1) PLR 320***. The relevant paragraph reads thus:-

“6. This contention of the learned counsel for the petitioner cannot be accepted because in the written statement the tenants stated that they are willing to remove the violations at the expense of the landlord- Now they have started saying that after passing of the

ejectment order by the Rent Controller, Chandigarh, they had removed the building violations caused to the suit property. Even if the violations to the property are removed during the pendency of litigation, it would not defeat the right of the landlord to seek ejectment. Otherwise all such petitions would be rendered in fruituous on the ground that the tenant has removed violation caused to the demised premises.

In ***M/s. British Motor Car Co. vs. Madan Lal Saggi (D) through L.Rs. and another, 2005 (1) SCC 8*** construction of two pacca sheds without consent of the landlord in the courtyard and the construction of the sheds were held to be of material impairment as it was held that the constructions were of substantial nature and they altered the form, front and the structure of the accommodation.

Lastly it cannot be lost sight of the fact that this Court is sitting in revisional jurisdiction and is not sitting as a Court of Appeal, as it has been held by the Constitutional Bench of the Apex Court in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCC 78***. The discretion which has been exercised by the Authorities below cannot be said to be suffering from any irregularity or lack of jurisdiction. Relevant paragraph reads thus:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the

Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Accordingly, keeping in view the cumulative discussion, this Court is of the opinion that there is no scope for interference in the well reasoned orders passed by the Authorities below and the present revision petition is dismissed. However, since the petitioner is using the building for housing the senior police official namely the Deputy Inspector General of Police, three months' time is given to the State of vacating the premises and

locating an alternative residence.

13.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

