

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

**Date of decision: 27.09.2017**

**CR No.3523 of 2014 (O&M)**

Urmila & another

...Petitioners

Vs.

Krishana Rani & others

...Respondents

**CR No.4119 of 2014 (O&M)**

Jang Bahadur

...Petitioner

Vs.

Krishana Rani & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Kanwaljit Singh, Senior Advocate, with  
 Mr. Abhishek Bajaj, Advocate, for the petitioner.

Mr. Avnish Mittal, Advocate, for the respondents.

**RAJIV NARAIN RAINA, J.**

1. The aforementioned two rent revisions have been preferred by the tenants, who have been evicted from the part/portion of the demised premises bearing No.414, 414-A, 414-B & 414-C, Khana Bazar (RHA Bazar), Ambala Cantt, which was let out to them years ago by the respondent landlords. The Appellate Authority, Ambala vide order dated 25.04.2014 has affirmed the findings of the Rent Controller holding that the building is unfit and unsafe for human habitation. The old shops are in a dilapidated condition and can crumble down sooner or later and pose a danger to life. The building preeminently requires demolition and re-building. It is not only the part/portion occupied by the tenants, but the entire

structure is also in the same condition, the building being rather old and decrepit and weak in its foundations some of which are apparent to the eye in the photographs.

2. When the matter came up for hearing on 06.09.2017, I passed the following order:

“In order to resolve the dispute; whether the two shops in dispute are unfit and unsafe for human habitation, this Court appoints Mr. R.S. Bains, Advocate of this Court to be Court Commissioner. He would make it convenient to visit the spot, make his assessment regarding the state of the two buildings and submit his report for consideration of this Court. The Chief Engineer, PWD (B&R), Haryana is directed to nominate an Executive Engineer of the Department posted at Ambala who has knowledge of structural engineering to be present at the time of the visit of the Court Commissioner to assist him on technical issues, as may be discussed between them on structural aspects of both the tenanted premises.

It may be recorded that Mr. R.S. Bains, Advocate is himself an alumni of Punjab Engineering College (PEC) and is well-acquainted with engineering issues.

The Court Commissioner may take the assistance of any person for which the Superintendent of Police, Ambala is directed to provide necessary help, in case it is asked for.

The fee of the Court Commissioner is fixed at Rs. 50,000/- (Rs.25,000/- to be paid by each tenant in both the cases) consolidated at the time of visit.

The parties would call a local photographer to take photographs as instructed by the Court Commissioner and would send copies to the office of the counsel appearing for the respective parties. The expenses towards this would be nominal and will be borne by the tenants in addition to the fee of the Court Commissioner. The Court Commissioner may please submit his report before this Court three days in advance fixed with copies to both the counsel for the parties.

List on 27.9.2017.

In the meanwhile, both the parties shall strictly maintain *status quo* at site and ensure that the visit of the Court Commissioner is peaceful. Both the tenants shall cooperate with the Court Commissioner at the time of inspection. Date of inspection will be decided by the Court Commissioner under intimation to the respective counsel with intimation to the Chief Engineer PWD (B&R) Haryana, Panchkula to the Superintendent of Police, Ambala for this, counsel for the parties would tie up with Mr. R.S. Bains, Advocate.

Both the parties would also ensure that copy of the order be sent to the Superintendent of Police, Haryana and for his knowledge and assistance.

Copy of this order be also sent by the office to the Chief Engineer, PWD (B&R), Ambala, Haryana and Superintendent of Police, Ambala including by E-mail on the official website of the Department for necessary information and action.

To facilitate the implementation of the order, the contact Number of Mr. R.S. Bains, Advocate is incorporated in this order.

Mobile Number: 9417012580.

Copy of this order be given to the respective counsel under the signature of the Bench Secretary.

A photocopy of the order be placed on the file of connected case.”

3. Mr. R.S.Bains, Advocate of this Court was requested to be Court Commissioner to visit site; take photographs from the point of views of both landlord and tenants and submit his report on his findings at site, answering whether the building is unsafe and unfit for human habitation.

4. In compliance of the order dated 06.09.2017, Mr. Bains has submitted a comprehensive report dated 17.09.2017, which is taken on

record. The relevant passages from the report dated 17.09.2017 read as follows:

- “1. In pursuance to the directions of this Hon’ble court, I had visited the shops in dispute at Topkhana Bazar, Ambala Cantt after informing telephonically the counsels for the parties as well as Engineer in Chief, PWD, Haryana through whatsapp and mobile. I received the message that Sh. D D Kamboj, Xen, Ambala has been deputed to reach the site as per directions. The parties were informed that the time of inspection of the property in dispute will be 3 PM on Sunday, 17/09/2017.
2. Accordingly, the tenants as well as the landlord and the officer from the PWD Department were present at 3 PM on 17/09/2017 at Ambala. The shop in dispute is on an inner shopping lane in Ambala Cantonment in a small market named Topkhana Bazar. Two photographers were also present one brought by the tenants and the other brought by the landlord. Both the parties delivered the photographs at my office. The photographs of landlord are numbered as L-1, L-2 etc. and that of tenants are numbered as T-1, T-2 etc. All the photographs were taken in the presence of the parties and the officer from the PWD Department.
3. The rough site plan prepared by me on the spot is annexed as Annexure A and the photographs delivered by land lord are L-1 to L-22 and that of Tenants are T-1 to T-26 after removing similar ones. My conclusions is primarily derived from the spot inspection, and are in accord with the photographs delivered by both the parties though taken in my presence and the assessment made at the spot by the Executive Engineer Sh. D D Kamboj who was present as per the court directions.
4. It’s an old building whose age would be more than 70 years. It is dilapidated condition due to age, but it has

been strengthened from within by extra brick and cement racks/wall and by putting extra iron girders on the roof and thereafter putting false ceiling. There are total 4 rooms under occupation of both the tenants. Two rooms each are in possession of each of the tenant. The rooms in possession of tenant running hardware shop are numbered 414 and 414 B. The rooms which are in possession of the tenant who is running tailoring shop with the title of Paris Tailors is given the mark 414 A. The demolished portion of the plot at the back of the two portions have been given the number as 414C and this portion is shown on the rough site plan prepared by me at the spot with the help of the parties. The front room of both the tenants have false ceilings and is well decorated and does not give any hint that the building is not safe or unfit for human habitation. The room behind the front of the Paris tailors is the workshop and in this room there is no false ceiling. It clearly shows that roof have been strengthened by iron girders. Similarly the front room of Raunak Singh and Sons has false ceiling and the room behind it also has false ceiling and therefore the condition of the roof is not easy to judge without disturbing the false ceiling but from the surroundings of the building and the inspection of the inner and outer walls it is clear that behind the old wall, a new wall has been constructed inside the shop to strengthen it and thereafter iron girders are put on it, which is not visible from outside. There is fresh visible cemented repairs outside and inside which gives an idea that measures have been taken to strengthen the structure which is old and dilapidated.

5. The portion of the plot which is stated to have fallen down was covered by Malba which was when uncovered by about two feet shows old door and very old wooden door frame and the wall constructed after the frame which is inside of portion 414 B and this was

repeatedly pointed out /shown to me by the tenant as evidence that the structure is sound. It is also evident that if there was no fresh wall inside the original wall in portion 414 B, the original wall would have fallen as the portion numbered 414 C has fallen.

6. The roof photographs also show that half of the roof on front side has been cemented and the backward side of roof is still mud based only. All the buildings around the rented premises are visibly constructed much later and are more than one story high. The landlord photographs reveal the cracks more visibly as is taken closely and the tenants photograph taken from a little distance and therefore conceals many of the cracks. But basically there is no differences between the two sets of photographs as all the essential features of the buildings are visible.
7. Photographs L-1 to L-5 and T-1 to T-4 have been taken from the front side of the shops in dispute. Their banner clearly visible as Ronak Singh and sons, tenant of 414 and 414 B and Paris Tailors in occupation of portion 414 A. L-6, L-7, L-8, L-19, L-20, L-21, L-22 and T-5, T-25 and T-26 show the side view. The back view, where Malba is lying, in portion shown as 414 C in the plan, is shown in photographs L-9 to L-14 and also in T-24. The inside view of roof in work area of portion 414A where girders are visible in an effort to support the old roof is in photographs L-17, L-18, T-6, T-7, T-8, T-14. The roof top is visible in photographs T-17 to T-23 and also in L-23. The inside view of the hardware shop is in photographs T-4, T-8, T-9, T-10, T-11, T-15, T-16 and of Tailor's shop is T-12, T-13, T-14.
8. Photograph T-11 shows the strengthening of the wall clearly where concrete racks along the wall have been constructed and the door is behind it. T-15 and T-16 shows the wall constructed which is back of 414 B and adjacent to 414C and from 414 C side the old decaying

door frame is visible but from inside the shop the same wall is fresh and newly constructed with racks placed on it. T-15 and T-16 shows the same wall from inside what is being shown from outside in L-9 to L-14. Roof top photographs also shows half roof of mud layered and other half of cement.

9. The opinion of D D Kamboj, Exe. Engg. P.I. PWD (B & R), Ambala Cantt. is categorical that the existing building seems to be very old which is not safe for human beings. The structure is also damaged at many places which was constructed in brick masonry with mud mortar.

10. My conclusion is that building is no doubt old and would have fallen down by now but for the strengthening measures taken by installing iron girders in the roof and walls have been strengthened by constructing brick and cement racks/wall till the ceiling which may have added some strength to the structure but measures taken being without any plan or design and completely adhoc, it will remain hazardous and unsafe for humans.

11. The fee had been paid by both the tenants at the spot on 17.09.2017.”

5. Along with the report, Mr. Bains has meticulously annexed a rough site plan (not to scale) as well as numerous accompanying photographs of the two shops occupied by the two tenants in the connected revision petitions, which together convinced me to accept the report of the Court Commissioner that the building has precariously outlived its life and without doubt appears unfit and unsafe for human habitation. It may be mentioned that before the Rent Authorities, expert opinion was produced on either side and the one submitted by the landlord was accepted as the correct position obtaining at site.

6. I have heard learned counsel for the parties and find that the scope of this petition is narrow and the report submitted by Mr. Bains and the photographs attached, approve the stand of the landlords which is prima facie convincing and the tenants must make way to eviction. I accept the report of Mr. Bains as the correct position. I have nothing to doubt in the fair report which is made rule.

7. Accordingly, the findings of the Rent Authorities are confirmed. The petitions are dismissed.

8. The tenants/petitioners are directed to vacate the part/portion of the demised premises by 31.03.2018 to avoid dislocation of business and to afford reasonable time to shift, in case the building holds till then, provided they furnish an undertaking on an affidavit within a period of 15 days from the date of receipt of the certified copy of this order before the Rent Controller/Executing Court that they will handover vacant and peaceful possession of the shops to the respondents/landlords by the date permitted.

9. Meanwhile, the tenants will pay the arrears of rent/*mesne* profits from the due date within two months to the landlords and continue to pay the future rent/*mesne* profits by the 7<sup>th</sup> day of every calendar month till possession is delivered. Single default in payment will bring the eviction order automatically into operation. In such situation police help is extended for eviction.

**27.09.2017**  
Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**

*Whether speaking/reasoned:* Yes

*Whether Reportable:* No