

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

**Civil Revision No.619 of 2017 (O&M)
Decided on : 31.01.2017**

Anil Kumar Makkar

... Petitioner

Versus

Shakuntla Devi and others

... Respondents

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

Present : Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate and
Mr. Arnav Sood, Advocate for the petitioner.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the concurrent findings of the Courts below, whereby the eviction of the tenants from the shop in question situated at Rewari was ordered on the ground that the building is unfit and unsafe for human habitation.

The petition was filed on the ground that the premises in question is more than 100 years old and several cracks are visible in the wall, floor and roof and the water leakage was present from the roof and mortar had peeled off. The demised premises was unfit and unsafe for residential purpose and in a dilapidated condition.

In response the petitioner took the plea that the shop was part and parcel of big building and there were several tenants and are still in occupation of the remaining part of the building. The fact that the rent of the shop was ₹50/- had been admitted and the age of the building was denied or that it may fall down any time. It had been pleaded that the petitioner had filed a civil suit against landlord as they had installed the water taps behind

the disputed shop and made a 'kachi nali' and diverted the flow of water towards the disputed shop. Resultantly, the following issues were framed by the Rent Controller:-

- (1) Whether the respondent is required to be evicted from the property in dispute on the ground mentioned in the petition?OPP*
- (2) Whether the petition is not maintainable?OPD*
- (3) Whether the plaintiffs are estopped from filing the petition by their own act and conduct?OPD*
- (4) Whether the petitioners have no cause of action to file the present petition?OPD*
- (5) Relief.”*

The respondent-landlords examined as many as five witnesses including the building expert as PW-4 Nand Kumar Nagpal and Photographer as PW-3 Gajender Singh apart from the drafts man.

In contrast, the petitioner-tenant examined as many as 15 witnesses including building expert and the Photographer, namely RW-11, Y.D. Adalkha Building Expert and Photographer, Sunny Sachdeva as RW-12 apart from the drafts man RW-7 Chaturbhuj. Keeping in view the fact that there was no dispute qua the relationship of the landlord and tenant and the rent had been paid and taken without protest, the ground for eviction for non-payment of rent was decided in favour of the tenant. The demised premises being more than 100 years old were held to be in dilapidated condition and unfit and unsafe for human habitation.

On the issue of unfit and unsafe after perusal of the photographs and deposition of the Building Expert the Rent Controller held that it would go on to show that the property in question was in very

bad condition the and could fall at any time. The lime mortar used in the property had lost its strength and could be removed from the walls without help of any instrument/equipment. The southern wall of the shop has lost its space, when seen from ground floor roof. The roof was in the shape of pond which was checked by pouring bucket water. The observations of the Building Expert PW-4 were accordingly taken and the report Ex.PW-4/1 was also taken into consideration. Even the report of Yashpal Sharma, Advocate Ex.RW4/1 who had been appointed in the civil proceedings was also taken into consideration to come to the conclusion that the shop in question was in very bad condition. This was done in view of the fact that there was conflicting views as such between the two building experts who were deposing in favour of their masters. The report of the Advocate reads as under:-

“Observations:

The floors, roof, walls have a decayed at places. The walls of the shop are made of Nanakshahi bricks and stone in lime mortar. Nanakshahi bricks are not in use for more than 100 years, which confirms that the shop is more than 100 years old. The shop is in very bad condition. The walls are eaten by REH also, due to which the bricks are disintegrating and losing space. Wooden members are eaten by white ant/moth. Mortar can be taken out from walls at places without use of any sharp instrument. At places, finger could be inserted in the gaps of the joints, which confirms that the mortar has lost its adhesive power and is not in a position to stick any more. The building is of 2nd class and is in dangerous condition. Western wall has developed big cracks and is beyond repairs, which is clear from photographs attached herewith. Parapet wall of the shop also has fallen down. Southern wall of the shop has lost its space. The roof has become in the shape of pond. Water seeps from the

roof.

Conclusion: On the basis of my observations and detailed report, I am of the definite view that the shop in question as a whole has outlived its life and is structurally unsafe. It is unfit and unsafe for human habitation/commercial use. The shop should be dismantled at once in the public interest to avoid any material damages to the property/passers-by as the shop is situated on a crowded road.”

Resultantly, the eviction was ordered by the Rent Controller on 27.02.2012. The same has also been upheld by the Appellate Authority.

Senior counsel for the petitioner has vehemently submitted that at one stage the building expert has opined that even the load of three story building can be taken by the building in question and, therefore, merely because of the age of building being beyond 90 years would not be a ground for eviction. It is further submitted that the building which was being constructed adjoining the tenanted premises had led to the seepage of water and the due to the construction, condition of the shop in the photographs seem to be having an appearance of unfit and unsafe.

After keeping into account the submissions made by the senior counsel for the petitioner, this Court is of the opinion that the argument as such raised is not liable to be accepted. The report of the Building Expert Ex.PW-4/1 Nagpal Associates would go on to show that the inspection of the building was conducted on 05.11.2009 in the presence of the photographer PW-3 Gajender Singh. It was noticed that wall in question are made of Nanakshahi Bricks (popularly known as Kakkaiya Bricks in local language) and stone in lime mortar and

plastered with the same mortar. These bricks are not manufactured for more than 100 years. The false ceiling had sagged down and there are marks of water on the false ceiling. The walls had developed through and through cracks, which could not be seen from inside, since the walls were covered with cup boards/racks and which were not removed for the purpose of inspection. Plaster from walls was falling down at places, which confirms that the mortar used in the construction had lost its strength as well as adhesive power and was not in a position to stick any more. The roof was in the shape of pond, which was checked by pouring bucket of water and wooden battens in Khan-2 and false ceiling in Khan-1 were having marks of water. Wooden members used in door frames and lintel were eaten by moth, which was clear from bore holes and hollow sound when struck with a small hammer. Moreover the wooden lintel provided above the door had sagged which was clear from the photograph attached. The floor which was made of cement concrete was in very bad condition and repairing with the cement concrete would not be successful. The walls were also eaten, due to which bricks are disintegrating and building was in dilapidated condition. Accordingly, it was held that the building was in very condition.

Counsel for the petitioner has also produced the photographs of the premises in question and perusal of Annexures P-15 to P-24 would further go on to show that what has been recorded by the expert PW-4 and the Advocate is in consonance with the ground reality prevailing on the site.

As noticed an independent person, namely, Yashpal Sharma has also deposed adversely as such against the condition of the shop. In such circumstances, the findings concurrently recorded by the authorities below as such would not suffer from any infirmity. It has also been noticed by the Appellate Authority that the alleged allegation that there was a tap installed to divert the water but the same was not seen in various photographs and therefore the plea that the landlord was responsible was rightly rejected. In such circumstance, the argument raised as such that this was the reason for the condition of the shop is not tenable, keeping in view the fact that this Court is sitting only as a revisional jurisdiction. Reliance can be placed upon the law laid down by the Apex Court in '**Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh' 2014 (9) SCC 78**. In the said judgment the Apex Court has held that this Court is not sitting as a Court of appeal. The relevant observations read as under:-

“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.

Resultantly, keeping in view the findings recorded do not suffer from any such procedural illegality, the present revision petition is dismissed in limine.

JANUARY 31, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No