

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CR No.1560 of 2018 (O&M)

Date of decision: 01.11.2018

Ram Lal

..... Petitioner

Versus

Yogesh Nagpal

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Lajpat Sharma, Advocate
for the petitioner.

Mr. Sanjiv Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Tenant-petitioner is in the revision petition against the orders passed by the Rent Controller affirmed by the Appellate Authority.

Landlord had sought eviction of the tenant on various grounds, however, only two grounds have been pressed before this Court. Learned Rent Controller held that the building has become unfit and unsafe for human habitation and ordered eviction, however, on the second ground i.e. material impairment in the value and utility of the building on account of removal of the middle wall between the two shops, the Rent Controller returned a finding in favour of the tenant. Learned Appellate Authority reversed the finding of the Rent Controller ordering eviction of the tenant on the ground that the building has become unfit and unsafe but however also reversed the finding of the Rent Controller that the tenant has materially impaired the value and utility of the building by removing the wall between

the two shop. That is how the tenant is in revision petition.

In this case, arguments were heard initially on 13.08.2018 and case was adjourned to 14.08.2018. On 14.08.2018, learned counsel for the respondent-landlord also submitted that the finding of the Appellate Authority with regard to building being fit for human habitation is erroneous. Learned counsel for the tenant-petitioner was granted opportunity and record of the Courts below was requisitioned.

Thereafter, counsel for the parties sought various adjournments and the case has now been finally heard. As regards material impairment in the value and utility of the building, it will be noticed that the tenant has been changing his stand repeatedly. In the rent petition, it was pleaded that the tenant has taken two shops on rent. However, when the tenant appeared in evidence, he also took a stand that shops were taken on rent. However, in the subsequent part of statement, the tenant took a stand that he has never impaired the value and utility of the shop by removing two walls of the shops without getting permission of the landlord. However, when he was cross-examined, he took a somersault and stated that he had taken only one shop on rent. When further cross-examined, he stated that initially it was one shop but he constructed a wall in between to convert it into two shops in the year 1980 and had removed the wall in 2010. The petition was filed on 08.09.2012. Thus, removing of the wall in between the two shops by the tenant is not in dispute. Still further, when attention of the tenant was drawn to the photographs which have been produced, he admitted that there are two separate shutters opening towards the road of these two shops. It is apparent from the perusal of photograph Ex.PW-3/B that the wall in between the shop has recently been removed as even the bricks gathered after removing the wall are visible and stored in the shop in question. Once the landlord had

constructed two shops and it is the tenant who has removed the wall in between and that also without permission of the landlord, the findings of the learned Appellate Authority cannot be interfered with.

Still further on second aspect, this Court on interpretation of power of the revisional authority to allow the landlord to challenge the order passed by the Appellate Authority without filing revision petition has been examined by the Court in CR No.1521 of 2007 titled as 'Anil Kumar and another Vs. Makhan Singh Grewal' decided on 26.07.2018. This Court had relied upon a judgment passed by the Hon'ble Supreme Court reported in (2002) 6 SCC 1, 'Nalakath Sainuddin Vs. Kooridadan Sulaiman'. Section 15 (6) allows the revisional authority to exercise its revisional power at any time on its own motion or on the application on any aggrieved party. In view of the aforesaid judgments, this Court now proceeds to examine the correctness of the findings arrived at by the Appellate Authority with regard to building being fit and safe for human habitation. It has come on record that the roof is of wooden battens supported on an iron girder. It is apparent from Ex.PW-3/G and Ex.PW-3/H, the photographs that one wooden batten has already fallen down and second had bent after having decayed. The condition of the roof of the remaining wooden battens is also not good. Still further, from the photographs, it is apparent that a big hole has been made in the wall so as to keep a generator of electricity outside. There is another hole in the wall which is also visible. Still further, the report as submitted by the building expert examined by the tenant, it is apparent that the report given by him is only general and even he goes on to state in the report that due to maintenance in time, the building is fit for human living for some years. This report was submitted on 26.08.2015. The relevant part of the report is

extracted as under:-

“1. I found that whole portion of the shop is constructed with burnt brick masonry and whole portion having cement plaster and white wash.

2. Roof of the aforesaid shop built with Iron Girder, wooden Battens, Tiles , Mud Phaska and tile terracing with cement grouting on top.

3. The Shop having two Rolling Shutter and conglomerate floor.

I think that the aforesaid building/Shop is old but due to maintenance in time by the user or owner, the same building is fit for human living for some years.”

When he was cross-examined by learned counsel for the landlord, he went on to admit that plaster on the walls had come out and there were cracks which have been concealed with plaster and white putty. He has stated that plaster is two years old. He admit that in his report, he did not disclose about the cracks and repair.

On the other hand, landlord has also got the building inspected from a Civil Engineer who has after inspection stated as under:-

“That the deponent affirms that after visiting it was found that the condition of the building is very dilapidated condition and more than 70 years old due to this reason all the joints of the bricks in the brick work have opened out due to coming out of the earth. As the building was constructed in earth, cracks have developed at so many places in the walls and roof. Roof laid being of wooden battens (KARIIES) have rotten out and have broken and fell down at many places. Thus making holes in the roof at so many places. More ever roots of Peepal tree and Bard trees have grown at so many places of the wall and roof in the building in question. That the condition of the shop is so dilapidated and irreparable and require immediate dismantlement to avoid any loss of human life.

That the deponent fruther affirms that there is one steel girder laid over two pillars over which wooden battles (karries) have

been placed. The whole roof is resting on this steel girder otherwise it would have already collapsed. The doors and window are also in bad conditions. Earth and karries have fallen at so many places in the shop.”

In cross-examination, learned counsel for the tenant could not extract much from the building expert examined by the landlord who had declared the building to be unfit and unsafe for human habitation.

Learned Rent Controller on appreciation of evidence had held that the building is unfit and unsafe, however, Appellate Authority reversed the finding on the ground that the building expert examined by the landlord has not submitted any report. Learned Appellate Authority also overlooked the fact that the building expert examined by the tenant had also admitted in the evidence that the walls were also having cracks which have been concealed with the plaster and white putty. He even goes on to admit that this plaster is almost two years old. Thus, on the day the petition was filed on 08.09.2012, the case set up by the landlord is established.

Keeping in view the aforesaid facts while upholding the finding of learned Appellate Authority with regard to building having been impaired by the tenant, this Court also holds that this building is unfit and unsafe for human habitation.

Resultantly, the revision petition is ordered to be dismissed.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

01.11.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No