

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

CR No.3255 of 2006 (O&M)
Date of decision : 27.08.2018

Master Desh Mitter (now deceased) through his LRs

...Petitioner(s)

Versus

Kamla Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate for the petitioner(s).

Mr. Bhanu Pratap, Advocate for respondent Nos.2, 3 and 5.

ANIL KSHETARPAL, J. (ORAL)

On 09.07.2018, this Court after noticing the contention of the counsel for the landlord, requested the Rent Controller to personally visit the site and after holding reasonable enquiry, submit a report to this Court.

It may be noticed that during the pendency of the petition, the landlord had filed an application pointing out that the tenant has already closed the shop and is not doing any business for the last 10 years. The tenant was granted the opportunity to file the reply. The only objection taken was that this was not the ground for eviction which was pleaded before the authorities below. However, the tenant did not dispute that shop is lying closed. The order dated 09.07.2018 is extracted as under:-

“During the pendency of the present revision petition, an application has been filed by the landlord pointing out that the tenant has closed the shop and is not doing any business for the last ten years and even electric connection of the said shop was disconnected almost ten years ago.

These facts have not been denied in the reply which have been filed today. However, keeping in view the fact that this ground was not pleaded before the Rent Controller, therefore, the Rent Controller, Hoshiarpur is requested to visit the site and after holding reasonable enquiry from the neighbours submit a report to this Court as to what is the current position of the property in dispute.

Let, this report be submitted within a period of one month from today.

A copy of the order be forwarded to the learned Rent Controller, Hoshiarpur immediately alongwith photocopy of the paper book.

Parties through their counsel are directed to appear before the Rent Controller, Hoshiarpur on 18.07.2018 at 10:00 AM.

List before this Court in urgent list on 27.08.2018.”

Learned Rent Controller after recording the statement of the neighbours and also after visiting the spot, has submitted a report that the shop is lying closed since long. However, learned Rent Controller could not gave exact date or time since when the shop is lying closed. The relevant part of the report dated 07.08.2018 is extracted as under:-

“During the enquiry the undersigned has recorded the statement of Devinder Singh son of Gurcharan Singh who stated that he is running the shop of manufacturing the

coolers at Sutahri Road. The shop in dispute is adjoining to his shop as well as the shop of his brother. Rameshwar Dutt was the tenant in the shop in dispute in which he was running the provisional store who has expired 16/17 years ago. After his death his heirs never opened the shop in dispute nor they do any business in the same. Kamla Devi wife of Rameshwar Dutt is not present at the spot nor any of his legal heir came present.

Amandeep Singh son of Desh Mitter suffered the statement that Rameshwar Dutt was the tenant in the shop in dispute and his father had filed a case for ejectment of Rameshwar Dutt from the shop in dispute. His father has expired on 13.1.2009 and he alongwith his brother Pawandeep Singh are the only legal heirs of his father on the basis of the Will. Rameshwar Dutt was running the provisional store in the shop in dispute. During the pendency of the case Rameshwar Dutt has expired and his heirs were impleaded. After the death of Rameshwar Dutt none of his legal heir do any business in the shop in dispute and the shop remained closed. When the Ld. Rent Controller has visited the spot he alongwith his brother, Devinder Singh and Gurdev Singh were present there Rajwinder Singh has clicked the photographs at the spot as per the instructions of the Ld. Rent Controller.

Rajwinder Singh son of Hardial Singh, photographer clicked the photographs at the spot on the instructions of the undersigned and produced 12 photographs.

From the statements of the above said persons as well as from the existing position at the spot it cannot be exactly concluded that from when the shop in dispute is closed, however, it appears that the shop in dispute is lying closed since long time. (The statements of the parties as

well as the photographs are enclosed here with). ”

Learned Rent Controller has also sent the photographs of the alleged shop which clearly proves that the shop is lying closed for quite sometime and even the front door of the shop in question is in totally damaged condition.

Learned counsel for the tenants-respondents has submitted that this Court should not pass an order of eviction on the ground which was not pleaded before the Rent Controller and the Appellate Authority.

This Court has considered the submissions.

As per Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, the High Court also has a power on its own motion to call for examine the record relating to any orders passed or the proceedings taken under this Act. No doubt, this order is with reference to the legality and propriety of the proceedings which are being taken by the authorities below, however, once the rent proceedings remained pending in the Courts for a long time, the Court cannot shut its eyes from the subsequent developments which have taken place.

In the present case, the petition was instituted on 06.11.1997. The revision petition is of the year 2006. It has come up for final hearing in the year 2018. If this Court ignores the report of the Rent Controller which is the deciding authority at the first instance and remits the case back to the authority again, substantial delay would be involved. In the present case, even during the course of arguments, today in open Court, learned counsel for the respondents-tenants could not address any

meaningful arguments on the correctness of the report submitted alongwith the photographs attached.

In view thereof, the revision petition is allowed.

Tenants are ordered to be evicted.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No