

In the High Court of Punjab and Haryana at Chandigarh

CR- 4042 of 2016(O&M)

Date of Decision:December Ist, 2018

Suraj Prakash Ghai and others

---Petitioners

vs.

Avtar Singh (since deceased) through his LRs and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. K.S.Gill, Advocate
for the petitioners
Mr. R.S.Chauhan, Advocate and
Mr. Pankaj Jain, Advocate
for the respondents

Rekha Mittal, J.

The present petition directs challenge against concurrent findings of fact whereby application for eviction from Shop Nos.5 and 6 has been allowed on the sole ground that the tenancy premises has become unfit and unsafe for human habitation.

Avtar Singh and others, the respondents prayed for eviction of the petitioners on the grounds that petitioner No. 1 is in arrears of rent; he has sublet the shops to petitioners No. 2 to 4 without consent of the respondents; shops are closed for the last more than five years and the shops are not fit for human habitation. The Rent Controller rejected claim for eviction on other grounds but allowed the application by upholding plea of

the respondents that the shops have become unfit and unsafe for human habitation. The eviction order dated 29.11.2014 led to filing of appeal by the petitioners and cross objections on behalf of the respondents/landlords that came to be decided by the Appellate Authority vide order dated 22.3.2016 whereby eviction on the ground of premises being unfit and unsafe for human habitation was affirmed and so also findings of the Rent Controller rejecting eviction on the grounds of non-payment of rent and subletting were affirmed and as a consequence, cross objections preferred by the respondents-landlords were dismissed.

Counsel for the petitioners would urge that the courts have failed to appreciate pleadings qua building being unfit and unsafe and evidence adduced to substantiate that plea in right perspective, therefore, seriously erred rather committed perversity in ordering eviction that the building is unfit and unsafe for human habitation. It is vehemently argued that the courts have relied upon testimony of Ved Parkash Saini AW3, the so called expert but the witness has not produced any document with regard to his educational qualification much less having sufficient experience to make a report with regard to condition of the shops in question. It is further argued that Ved Parkash Saini in his cross examination has made vital admissions to negate plea of the respondents but both the courts have failed to appreciate his testimony in details, thus, proceeded in a faulty manner to accept case of the respondents.

Counsel for the respondents, on the contrary, has supported findings of the courts with the submission that the same neither suffer from illegality nor otherwise can be interfered with, in exercise of limited

revisional jurisdiction. It is further argued that the petitioners did not examine any witness to counter testimony of Ved Parkash Saini AW3 with regard to existing condition of the shops in question. Further argued that roof of one of the shops had fallen, sufficient to establish plea of the respondents that the building is unsafe and unfit for human habitation.

I have heard counsel for the parties, perused the paper book and records.

Before appreciating rival submissions made by counsel for the parties, it is pertinent to take note of material averments with regard to building being unfit and unsafe for human habitation. A relevant extract from sub para (iv) of para 3 of the eviction application, reads as follows:-

“That the roof of the shops have developed cracks and as such may fall at any time and the same is unsafe and unfit for human habitation.”

In response to this para, the petitioners replied in the following words:-

“That para No. 3 (iv) of the application is absolutely incorrect and hence denied. It is absolutely incorrect that roof of the shops have developed cracks and as such may fall at any time. The shops in question are safe and are absolutely fit for human habitation, as both the shops are having concrete/RCC roofs.”

A plain but careful reading of the aforesaid extracts makes it evident that the only allegation raised by the respondents with regard to the premises being unfit and unsafe for human habitation is that roofs have developed cracks and as such may fall at any time meaning thereby that at

the time of filing of eviction application in August 2009, the roofs were intact and the respondents had expressed apprehension that the roofs may fall at any time.

Indisputably, the respondents engaged Sh. Ved Parkash Saini and he submitted report Ex. A3, site plan Ex. A4 and photographs Exs. A5 to A24 in order to prove that the building is unfit and unsafe for human habitation.

With regard to shop No. 5, the observations and conclusions by Sh. Ved Parkash Saini, reads as follows:-

“OBSERVATIONS:-

On my visual inspection, I observed that the Shop No. 5 marked on the attached plan is not in use since long and is in Dilapidated condition. Number of wild shrubs & peepal tree developed on the top of the roof, spots of rain water seepage on the bottom surface of roof. The roof is in extremely poor condition & look alike desert. The mud mortar of the brick work crippling down due to loss of its stiffness, the exposed faces of brick walls are not covered with the coat of plaster or cement pointing in order to protect them from the atmospheric influences, the bricks used in the walls lost its durability to withstand the destructive effects of atmosphere. The front & back wooden door found completely damaged and unlocked. Cracks observed in the walls and roof.

CONCLUSION:-

I observed that, on account of Dilapidated condition of the

Shop No. 5, loss of its life, loss of stiffness of mud mortar used in brick work of walls, unprotected exposed faces of wall, cracks in wall & roof, number of wild shrubs & peepal tree developed on the top of roof, lack of maintenance and ugly appearance, un-economical repair & poor condition of the roof slab, may cause collapse of the structure. The structure is not fit for Human Habitation & is unsafe.”

Similarly, observations and conclusions pertaining to shop No. 6 are to the following effect:-

“OBSERVATIONS:-

On my visual inspection, I observed that the Shop No. 6 marked on the attached plan is in use. Number of wild shrubs developed on the top of the roof, spots of rain water seepage on the bottom surface of roof. The mud mortar of the brick work crippling down due to loss of its stiffness, the exposed faces of brick walls are not covered with the coat of plaster or cement pointing in order to protect them from the atmospheric influences, the bricks used in the walls lost its durability to withstand the destructive effects of atmosphere. The structure lost its life.

CONCLUSION:-

I observed that, on account of loss of its life, loss of stiffness of mud mortar used in brick work of walls, unprotected exposed faces of wall, number of wild shrubs developed on the top of roof, lack of maintenance, un-economical repair, the structure

is unsafe and unfit for human habitation.

The structure of Shop No. 5 and 6 is made of brick masonry in mud mortar which is known as Kutcha-pukka Masonry and is frequently utilized for economy in inferior class of work & its life is approximately 40 years.”

With regard to shop No. 5, he has stated that cracks were observed in the walls and roof but with regard to shop No. 6, he is silent if any cracks were seen in the roof or the walls. In his cross examination, Ved Parkash Saini, at one point of time admitted that there are no cracks in the building in dispute. Again said, cracks observed by him in the building rather mentioned in his report Ex. R3 (wrongly mentioned as R3 in place of A3). He has admitted that cracks of minor nature are not dangerous. However, it was stated that the structure is unsafe on account of brick work made in mud mortar having lost its stiffness. Perusal of report Ex. A3 and facts elicited in cross examination of Ved Parkash Saini makes it apparent that his evidence is not at all sufficient to substantiate plea of the respondents that the building has developed cracks much less there are cracks in the roof or the alleged cracks in the roof have made the building unsafe and unfit for human habitation. Both the courts have failed to consider that plea of the respondents with regard to there being cracks in the roof rendering the building unfit and unsafe for human habitation does not get established from testimony of Ved Parkash Saini, the only evidence that has been made the basis to record a finding that the building has become unfit and unsafe for human habitation. As a matter of fact, report prepared by so called expert and his testimony in cross examination is

grossly inadequate to prove that there are cracks in the roof or walls of the shops in question that have made the building unsafe and unfit for human habitation.

Sh. Ved Parkash Saini has even gone to the extent of saying that roof of shop No. 5 has collapsed and he has clicked photo of the collapsed shop Ex.R13 (wrongly mentioned as R13 in place of A13). Perusal of A13 does not show that roof of the shop has collapsed.

Ved Parkash Saini would state that he has done B.Tech (Civil), however, he did not produce any document with regard to his technical qualification. He has admitted that he is not qualified as Structural Engineer. He has claimed himself to be Chartered Engineer (India), Registered Valuer of Government of India, under Section 34 AB of the Wealth Tax Act, 1957. There is no mention in the report or in statement on oath that Sh. Ved Parkash Saini has the experience of examining building from the point of view of its fitness or safety etc. His statement is silent if he had ever submitted any report before the court qua condition of a building. However, Ved Parkash Saini deposed that the structure is unsafe on account of brick work made in mud mortar having lost its stiffness which is beyond pleadings. However, in his further cross examination, he would state to the following effect:-

“The walls of the shop in dispute are straight and stiff. Volunteered the mortar is crippling down. Neither the roof is bad in shape and inclined/bend and same is the position of the walls.”

Suraj Parkash Ghai, petitioner appeared in the witness box and

reiterated his defence version. Nothing tangible and material has been elicited in his cross examination either with regard to their being any cracks in the roofs and walls of the shops or roof of shop No. 5 having collapsed after filing of the eviction application.

Photographs of the property indicate that the shops are not being maintained properly and for that reason, there is wild growth on the roof top and at places the walls are exposed because of usual wear and tear on account of rain, sun light and other climatic conditions. Nevertheless, statement of Ved Parkash Saini is not at all sufficient to record a finding that the building has become unsafe for human habitation particularly when the case is examined in the light of pleadings of the respondents and the facts elicited in cross examination of Ved Parkash Saini. In this view of the matter, I have no hesitation to hold that findings recorded by the courts suffer from illegality and perversity, thus, cannot be allowed to sustain. As a matter of fact, findings of the courts are the result of failure to take into consideration plea of the respondents and thereafter to examine the same in the light of testimony of Ved Parkash Saini, the star witness examined by the respondents. The mere fact that the petitioners have not examined a building expert to counter testimony of Ved Parkash Saini would be of no avail for the respondents as they have to stand on their own legs and cannot derive any strength from weakness of defence. That being so, findings of the courts on issue No. 4 cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed. Order dated 29.11.2014 passed by the Rent Controller ordering eviction and dated

22.3.2016 by the Appellate Authority affirming findings of the Rent
Controller are set aside. As a natural corollary, the eviction application filed
by the respondents fails and is accordingly dismissed with costs throughout.

(Rekha Mittal)
Judge

December Ist, 2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No