

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

Date of decision: 29.10.2018

1.

CR No.4399 of 2016(O&M)

Mender Singh and another

.....Petitioners

VERSUS

Smt. Bimla Devi and others

.....Respondents

2.

CR No.4479 of 2016(O&M)

Mender Singh and another

.....Petitioners

VERSUS

Smt. Bimla Devi and others

.....Respondents

3.

CR No.4642 of 2016(O&M)

Mender Singh and another

.....Petitioners

VERSUS

Smt. Bimla Devi and others

.....Respondents

4.

CR No.4649 of 2016(O&M)

Mender Singh and another

.....Petitioners

VERSUS

Smt. Bimla Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Alka Sarin, Advocate for the petitioners.

REKHA MITTAL, J.

This order will dispose of CR Nos.4399, 4479, 4642 and 4649 of 2016 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from CR No.4399 of 2016.

Counsel for the petitioners/landlords would argue that application for eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') was instituted on twin grounds namely that the respondents are in arrears of rent with effect from 01.04.2003 at the rate of Rs.16,000/- per month and respondents have materially impaired utility of the building and changed user of the premises by altering tenancy of ground and first floor. They have made additions and alterations by making structural changes without consent of the petitioners. Building in question was resumed due to fault of occupiers thereof. It is further argued that the respondents have broken a part of RCC slab in order to install a staircase and constructed a staircase to connect the ground floor and first floor qua the demises premises, therefore, they are guilty of violating the terms and conditions of tenancy and making additions and alterations resulting in impairment of value and utility of the premises in question.

I have heard counsel for the petitioners, perused the paper-book particularly orders passed by the Courts and copies of documents supplied during the course of hearing.

Before adverting to the submissions made by counsel for the petitioners, it is appropriate to recapitulate the provision of the Act, relevant in the present context, reads thus:-

“13. (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(i) xx xx xx

(ii)xx xx xx

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or”

The Rent Controller in para 16 of the eviction order has held, reads as follows:-

“16.... The stand of the respondent is that the stair case in the tenanted premises has been installed with the consent of the petitioner. But, they have failed to show/prove this consent anywhere. Moreover, respondent failed to show any sanction of installation of these stair case in his evidence. Perusal of cross-examination of petitioner reveals that, no where he has been asked question regarding this issue anywhere. Rather, he states that respondent was given path/stair case to go to the tenanted premises from the back stair case. Further, respondent examined Raj Bansal as RW-1, who, in his cross-examination, admits that I cannot give the dimensions of the portion of RCC slab, where stair case has been installed. This answer was given by him, when he was asked that as to how much RCC roof in length and breath (sic) is broken from where you are using ground floor portion to first floor portion. He further states that roof has been broken, where the stair case was

installed, which was done by the owner at the time of letting out the premises. But contrary to this stand, the respondent in his written statement says that temporary stair case was installed by him with the consent of petitioner. So, the pleadings and the evidence of respondent is contrary and the stand taken by him is not clear. Further, respondent has examined an expert, who tendered his report as Ex.RW-3/1, in which he states that there is no material impairment and there is no effect of impairment of the value and utility of the building in question. But, when he was cross-examined, he states that, “the width of the stair case has not been mentioned in my report. The rise and stead of the steps are of granite. The fact with cutting of the roof of the ground floor mentioning the size and cutting, where it connects with the roof is not mentioned in my report. Same is my answer for cutting of roof and how much roof in length and breath has been cut in order to connect with stair has not been mentioned in my report. Volunteered, the slab on the roof, which has been cut, is in between two lower beams, which is approximately 8 ft. x 12 ft.” Thus, the mentioning of this fact by RW-3 in his cross, itself, amply clarifies that there is material impairment on the part of respondent. Moreover, it is a settled law that impairment of value and utility has to be examined from the point of view of the landlord and not that of tenant. Reliance for the same can be placed on **M/s United Engineers through its sole proprietor Sarup Singh and another versus Nirmal Bhasin 2004(2) RCR P&H 627**. Further, making a hole of 8 ft. x 12 ft. in roof is surely material impairment of the value and utility of the demised premises. In the statement of RW-1, he has also admitted that respondent has impaired the stair case by making a hole in the roof. He, however, has taken contradictory stand. In some portion of statement, he stays that the hole in the roof was made by owners and some place, he says that hole is made by respondent. If the hole in the roof was made by landlord, the tenant could have taken such plea in his written statement. This plea is not there. Further, one of the stand of respondent is that stair case is of temporary nature. Here, it can be said that though the violation in question is of temporary nature, but it exposed the landlord to the peril of resumption. Once, the landlord is exposed to such risk, then the question of construction is meaningless. Reliance for the same can be placed on **M/s Goyal Steel Industries and others versus Sangram Singh Sandhawalia and others 2005(1) RCR 187**. Hence, in view of afore mentioned, I decided these issues in favour of petitioner and against respondent.”

The Appellate Authority set aside eviction on the ground of material impairment to the value or utility of the building and as a consequence eviction application was dismissed. Perusal of the aforesaid extract from Section 13 of the Act makes it evident that it is not each and every act of addition or alteration that would attract eviction on the ground of material impairment but it is only such acts as are likely to impair materially the value or utility of the building or rented land. In the case at hand, Rent Controller has accepted plea of the tenants that they have installed a metallic staircase for having access to the premises in question on the first floor from the ground floor of the building in question and the same is not a pucca/concrete structure. However, plea of the respondents/tenants that the same was installed with consent of the landlords at the time of creation of tenancy of demised premises on the first floor has not been accepted. However, the crucial question for consideration is whether the petitioners have been able to establish that due to installation of a ladder connecting the ground and first floor, it has resulted in materially impairing the value or utility of the building. Counsel for the petitioners has fairly conceded that tenancy qua portion of ground floor was created in the year 1999 and in respect of the demised premises i.e. measuring 17ft. x 51ft. on the first floor of SCO No.47-48, Sector 17-C, Chandigarh in the year 2003. The Rent Controller grossly erred and committed a patent illegality that since the act complained of has exposed the landlords to peril of resumption, issue No.3 (whether the respondents have impaired the value and utility of the demised premises) is answered against the respondents/tenants. Admittedly, the building in question was resumed by the Chandigarh Administration in the year 1978 and tenancy qua ground floor and first floor was created in favour of the

tenants long thereafter in 1999 and 2003. If installation of staircase by the tenants after creation of tenancy in 2003 is not a ground for resumption of the building where was the occasion for the Rent Controller to uphold plea of the landlords that the tenants have committed such acts, resulted in resumption of building.

The petitioners have not led sufficient much less cogent evidence to prove the extent of removal of RCC slab for installing a staircase/ladder of temporary nature much less that the act committed by the respondents is likely to impair value or utility of the building to a material extent. In the given scenario, even if the respondents have failed to substantiate their plea that they have installed the ladder/staircase without consent of the petitioners much less in writing but as the petitioners have failed to prove their case, the Appellate Authority has rightly set aside the eviction order passed by the Rent Controller on the ground of material impairment.

Counsel for the petitioners has made a vain attempt to raise some issue with regard to liability of the respondents to pay an amount of Rs.20 lakhs but since that plea is not relevant in the context of controversy raised in the eviction petition, the same cannot be entertained in the revision petition.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the petitions fail and are accordingly dismissed in limine.

OCTOBER 29, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no