

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.920 of 2010 (O&M)
Date of decision: 05.09.2018

Moti Ram

..... Petitioner

Versus

Mange Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Avinash Chander Jain, Advocate
for the petitioner.

Mr. M.K. Mittal, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Tenant-petitioner is in the revision petition against the order passed by the learned Rent Controller ordering his eviction, affirmed by the Appellate Authority. The eviction of the tenant was sought on the grounds of non-payment of rent, construction of the building is more than 200 years old and hence, have become unfit and unsafe for human habitation, bona fide requirement of the landlord as he has retired from Telephone Department and ceased to occupy the building for continuous period of 4 months, before filing of the petition.

The defendant contested the petition and pleaded that the building is not 200 years old and has not become unfit and unsafe for human habitation. It was denied that roof of 3rd portion of the shop has fallen down, however, it was admitted that two battens of the roof of the 3rd portion of the shop had fallen down.

Learned Rent Controller in order to find out the factual position

appointed a Local Commissioner AW-1 Surender Kumar, Advocate. He visited the premises on 22.03.1997 and reported that one wooden batten from roof of 2nd part and 3rd part of the shop is found broken. The landlord in order to prove dilapidated condition of the building produced Nand Kumar Nagpal, building expert. The relevant part of his report dated 10.08.2000 as extracted by the learned Rent Controller is extracted as under:-

“Bay – 1 : The Bay is having a false ceiling at a height of 9'-10”. The roof appears to be re-laid as 4 battens are visible from bay 2 side, when seen from roof, i.e. from Northern side, which is evident from photographs 1 and 2. In spite of relaying of the roof and the parapet, the parapet is having horizontal crack, which is evident from photographs 1 and 2. In case the roof was re-laid, the level of the roof should have been in conformity with the level of roof of bay 2 and 3. The re-laid roof is sagging from mid by 2”. This sagging was confirmed by pouring buckets of water on roof and the water was found to be stagnant for 2” depth in the center. The walls of the bay are fully covered by cupboards. Floor is covered by PVC tile floor.

Bay – 2 The roof was made of 16 local batten spanning North – South, supporting planks and lime concrete. When counted from Eastern side, battens nos.5, 7, 8, 9, 10, 11, 14, 15 & 16 have already fallen down. Remaining battens are also in a very bad condition as those are bent up and may collapse at any time. Roof of a big portion has also fallen down, which is very clear from photographs 5, 6, 7. Photographs were taken from the roof side only. Mortar from Eastern wall of this bay has fallen down upto height of more than 1” - above debris/malba lying the floor. In the North – Eastern joint of the bay, there is a gap of 2” in the mortar and the wall, which is going upto a height of 2” from malba lying on the floor. Mortar from this corner can be taken out without use of any sharp instrument.

Door D – 2 to enter in the bay – 3 has already fallen down, which is clear from photographs – 7. Even the part of wooden lintel over the door frame has already broken and is missing

from the place. Balance portion of the wooden lintel is also in a bad condition and can collapse at any time. Mortar from stones above this lintel has already fallen down to a depth of more than 3", which is also clear from photograph -7. There is a through and through gap of 4" x 2" above this lintel in the wall. Condition of the floor could not be seen due to heavy malba/debris lying on the floor. Plaster on Western wall is having a gap of 2" from the wall.

Bay – 3 : The roof was made of 16 local batten spanning North – South, supporting planks and lime concrete. When counted from Eastern side, only batten nos.1, 15 and 16 are remaining, whereas all others battens have already fallen down. This is very clear from photograph – 8 and 9. Presence of termites can be easily verified from nest of termites below batten 12 in the Northern wall.

The roof gives jerk on pressing with foot even, which shows that the roof is not a good condition. When seen from Western side of this bay, plaster from wall has already fallen down, which is evident from photograph – 3. The plaster on walls sounds hallow, when struck with a small hammer and mortar can be taken out from walls without help of any sharp instrument like screw driver etc., which indicates that the mortar used in the construction has lost its strength and is not in a position to stick anymore. When seen from bay 2, i.e. from Northern side, the plaster is falling from the wall. This wall has developed crack at South – East corner, which is clear from photographs -4. This crack at the corner indicates that the joint between the walls has lost space.

Front chajja has been covered from below by CGI sheets. The chajja is having gap from the wall on Western side, which shows that the chajja may fall at any time.

Business of cloth merchant is being run in this bay only. The door to enter in the bay -2 has been eaten by white ants, which is clear from marks of the nest of the white ants. Moreover, door to enter in bay-2 was found fixed with the help of nails, which were forcibly removed with the help of hammer, in order to

facilitate my inspection in the bay 2 and 3 from inside. Without removal of nails from the door marked "D-1" in the drawing enclosed herewith, it was not possible to open the door, which confirms that business is being carried out in bay 1 only, and bay 2 and 3 are being kept closed to hide the condition of the shop in question. This was clear from Malba/debris lying on the floor in bay 2 and 3. Due to presence of the Malba/debris, it is not possible to use bay 2 and 3. Even the roof of bay 2 and 3 have already fallen as it is clear from photographs 5, 6, 7, 8, 9, 10, 11. All the four corners of this bay have developed vertical cracks, which shows that the joint have left the space. In the East – Northern corner, the joint is having a gap of 4". Mortar from this corner can be taken out without use of any sharp instrument. Condition of the floor could not be seen due to heavy malba/debris lying on the floor.

In spite of repairs, the plaster on walls sounds hallow, when struck with a small hammer and can be taken out from walls without help of any sharp instrument like screw driver etc., which indicates that the mortar used in the construction has lost its strength and is not in a position to stick anymore.

OBSERVATIONS:- The roof, walls have decayed at places. The battens, planks are missing from places. Roof of a big portion of has already fallen down. The shop is in very bad condition.

CONCLUSION:- On the basis of my observations and detailed report, I am of the definite view that the shop has outlived its life and is structurally unsafe. It is unfit for human habitation/commercial use. The shop requires demolition immediately."

Learned Rent Controller further found that the building expert produced by the tenant has also admitted that roof of the rear portion of the tenanted premises has collapsed. However, he took a stand that the roof of the rear portion can be replaced at nominal cost.

Learned Rent Controller further found that in fact the tenant-petitioner has ceased to occupy the building as from February 2006 to

December 2006, only 6 units of electricity were consumed as proved by Desh Raj, the meter reader examined as AW-6.

Learned Rent Controller ordered eviction on the ground that the building has become unfit and unsafe for human habitation. The first appeal preferred by the tenant was also dismissed.

Learned counsel for the petitioner while initiating his arguments has submitted that the petitioner is only a tenant in possession of a platform in front of the shop which is not in dilapidated condition. This Court has carefully examined the argument. The tenant-petitioner when filed reply did not dispute his tenancy with respect to the shop. Therefore, the argument of learned counsel for the petitioner does not have any substance.

Learned counsel for the petitioner has produced some photographs to show that the petitioner is only occupying the platform in front of the shop. In the considered opinion of this Court, counsel for the petitioner cannot be allowed to build a new case for the petitioner. The building expert has also found that the building is more than 150 years old. Learned counsel for the petitioner could not point out any perversity or illegality in the findings arrived at by the Courts below.

Hence, the revision petition is dismissed.

CM-5310-CII-2018

In view of dismissal of the revision petition, the application for grant of stay does not require any further order.

05.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No