

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

CR No. 1266 of 2003(O&M)

Decided on: 21.09.2018.

Raj Kumar

.....Petitioner

Versus

Shashi Prabha and another

.....Respondents

AND

COCP No 1092 of 2012(O&M)

Raj Kumar

.....Petitioner

Versus

Shashi Prabha and another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.N.C.Kinra, Advocate
for the petitioner (s).

Mr. M.L.Saggar, Sr. Advocate
with Ms. Veenu Garg, Advocate
for the respondents no.1 to 4.

Mr. Chiranshu Bansal, Advocate
for Mr. Vikram Singh, Advocate
for respondent no. 5 (in COCP No. 1092 of 2012)

Mr. Ajay Ghangas, Advocate
for respondent no.6.

LISA GILL, J.

This order shall dispose of CR No. 1266 of 2003 and COCP
No. 1092 of 2012, as the latter emanates from the alleged disobedience of
order dated 04.04.2003 passed in CR No. 1266 of 2003.

Civil Revision No. 1266 of 2003 has been filed by the

petitioner, who is a tenant of the demised premises.

Brief facts necessary for the adjudication of the case are that petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'the Act'), was filed by the respondent-petitioners (hereinafter referred to as the 'landlords'). It was pleaded that the shop was rented out to the present petitioner (respondent in the petition under Section 13 of the Act and hereinafter referred to as 'tenant') by Dilbag Rai, who was the owner/landlord of the shop on a monthly rent of ₹700/- per month excluding the house tax. Dilbag Rai, who is the husband of respondent no.1 and father of respondent no.2 died on 08.10.1988 and the said respondent become the landlords/owners of the shop in question. Rent was received by them from the tenant. Eviction petition was filed on three grounds i.e.

1. Non payment of arrears of rent,
2. Tenant was alleged to have materially impaired the value and utility of the shop and
3. The building having become unfit and unsafe for human habitation.

It was claimed that the rate of rent of the demised premises was ₹700/- per month besides house tax and the tenant had not paid the arrears of rent from 01.01.1989 to 31.08.1998, despite requests. Moreover, the tenant, it was contended had impaired the value and utility of the shop which was in any case unfit and unsafe for human habitation.

Petitioner-tenant resisted the petition. Written statement was filed denying the averments in the petition. Tenancy was admitted though it was denied that the rent was ₹700/- per month. It was pleaded that the

petitioner-tenant took the shop on rent from Dilbag Rai at the rate of ₹250/- per month. It was denied that he impaired the value and utility of the shop in any manner or that the same was unfit and unsafe for human habitation.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned Rent Controller, Panipat:-

1. Whether the respondent is liable to vacate the shop in dispute on the grounds mentioned in the para no.3 of the petition?OPP
2. Whether the petition is not maintainable?OPR
3. Whether the petitioner has concealed the true and material facts from this Court?OPR.
4. Relief.

Learned Rent Controller, Panipat, concluded that the plea regarding arrears of rent did not survive as arrears of rent at the rate of ₹250/- per month were duly tendered. The ground of material impairment of the value and utility of the shop also did not find any merit with the Rent Controller. However, eviction of the petitioner-tenant was ordered on the ground of the building being unfit and unsafe for human habitation. Reliance was placed upon the report of the Local Commissioner appointed by the Rent Controller as well as report of PW-1-Sohan Lal Sharma, Building Expert, a retired Sub Divisional Engineer of PWD (B&R). Rent petition was allowed by the learned Rent Controller vide judgment dated 20.08.2002.

Appeal preferred by the petitioner was dismissed by the learned Appellate Authority, Panipat, vide judgment dated 31.01.2003.

Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner vehemently argues that both the learned Rent Controller, Panipat as well as learned Appellate Authority, Panipat, have grossly erred in concluding that the premises in question were unfit for human habitation. The demised premises, is a shop at Panipat, where the petitioner is still running a sweet shop. It is submitted that no reliance could have been placed by the learned Courts below on the report Ex.P-5 submitted by PW-5-Ramesh Bharadwaj, Advocate, Local Commissioner. Learned counsel for the petitioner vehemently argues that the boundaries in the local commissioner's report are not in consonance with those mentioned in the petition. Therefore, identity of the property in question as mentioned in the local commissioner's report is not established. It is contended that the local commissioner was appointed on the same day on which an application was moved by the petitioner. The spot was inspected without any kind of notice to the petitioner. The report in any case does not indicate that the building is unsafe for human habitation. It is further contended that the local commissioner was not an expert, therefore, he was not competent to give any opinion on the fitness of the building for human habitation. Thus the report should be discarded.

Similarly, the report Ex.P-1, prepared by PW-1-Sohan Lal Sharma, is not worthy of any reliance. It is argued that no suggestion was even put to the tenant that the shop is not fit for human habitation. No notice whatsoever was ever received by the petitioner-tenant from the Municipal Authorities and no objection was ever raised by anyone in the

vicinity in this regard. In-fact, there is no evidence to show that the demised premises are unfit for human habitation. Moreover, once the learned Courts below found that there is no impairment of the value or utility of the building by the tenant, finding that the premises are unfit or unsafe, is contradictory. It is contended that the landlords did not even appear in the witness box. Therefore, an adverse inference has to be drawn against them.

Learned counsel for the petitioner further argues that the learned Courts below have wrongly observed that as no objections have been filed by the petitioner-tenant challenging the local commissioner's report, the same is virtually accepted by the tenant. Learned counsel for the petitioner relies upon the decisions of this Court in **Jawahar Lal Vs. Mangu Ram 1987 (2) R.C.R. (Rent) 208** and **Satinder Kumar Gupta vs. The Regional Manager, Himachal Road, Transport Corporation, Pathankot, District Gurdaspur, 2013(1) R.C.R (Rent) 648**. It is reiterated that till today the shop is in existence and the petitioner is running his sweet (Halwai) shop therein.

It is submitted that during the pendency of this petition, an attempt was made by the landlords and respondents no.3 to 6 in COCP No. 1092 of 2012 to disturb the possession of the petitioner, which was protected by this Court on 04.04.2003. Marriage of the petitioner's daughter was to be solemnized on 31.03.2012 at Panipat and the petitioner's family was busy in connection with the marriage. Respondent no.6-Jagtar Singh (in COCP No. 1092 of 2012) had wanted to purchase the property in question. Therefore, in connivance with the other

respondents in the contempt petition including the landlords, part of the shop was dismantled. FIR No. 272 dated 01.04.2012, under Sections 457, 427, 34 IPC was registered at Police Station Model Town, Panipat. Photographs depicting the state of affairs were attached with the contempt petition. It is thus prayed that the impugned judgement dated 20.08.2002 passed by the learned Rent Controller, Panipat, as well as 31.01.2003 passed by the learned Appellate Authority, Panipat be set aside and the respondents in the contempt petition be punished for wilful disobedience of order dated 04.04.2003 passed in CR No. 1255 of 2003.

Learned counsel for the respondents-landlords refuted the averments raised by the learned counsel for the petitioner while submitting that well reasoned judgements have been rendered by the learned Rent Controller, Panipat and the learned Appellate Authority, Panipat, whereby eviction of the petitioner-tenant from the demised premises has been rightly ordered. Learned counsel for the respondents refers to the report of the local commissioner Ex.P-5, which is also attached with this petition as Annexure P-5 as well as report Ex.P-1 and the site plan Ex.P-6, which are attached with this petition as Annexures P-3 and P-6. It is submitted that the dilapidated condition of the premises in question is apparent on record. Both the learned Courts below have returned correct concurrent findings on this issue.

It is further contended that there is no dispute regarding identification of the property in question. The tenant has admitted the property in question. It is not denied that the local commissioner's report is in respect to the said property itself and none other. Moreover,

photographs Ex.PW6/16 which are on record also prove the dilapidated condition of the shop in question. It is vehemently denied that the respondent-landlords in any manner tried to interfere in the possession of the respondent-tenant during the pendency of the present revision petition or that any effort was made to dismantle the shop in question. It is submitted that the respondents have a number of other properties as well. The petitioner had been enjoying the possession of the property since so many years and even after the passing of the interim order by this Court on 04.04.2003. There was thus no occasion for the landlords to have tried to interfere in possession, as suggested, in the year 2012. Moreover, the wall in question may have fallen on its own, if at all. It is thus prayed that the revision petition as well as the contempt petition be dismissed.

I have heard learned counsel for the parties and have gone through the file as well as available record with their able assistance.

It is admitted by the petitioner-tenant that the shop in question was taken on rent by him from Dilbag Rai-predecessor-in-interest of the respondent-landlords in the year 1988. Eviction of the petitioner-tenant was ordered by the learned Rent Controller on the ground of the building/shop being unfit and unsafe for human habitation. The said finding has been duly upheld by the learned Appellate Authority. Reliance was placed on the report of the local commissioner (Ex.P-5), appointed by the learned Rent Controller as well as report Ex.P-1 submitted by PW-1-Sohan Lal. As per report Ex.P-1 submitted by PW-1, Sohan Lal Sharma, Building Expert, retired S.D.E (B&R), it is opined that the roof of the shop was made with wooden battens, which were damaged

and broken. The tenant had replaced some battens by G.I. pipes to keep the roof in position temporarily. Iron sheet, which was used to cover the Verandah roof, was entirely rusted and damaged on most places. Tiles were visible through damaged portion of the roof. Wooden battens were in damaged condition, resting on mud walls and infected with white ants. An additional bamboo was placed between the battens to support the roof temporarily. The tenant, it was stated had spread four (04) layers of polythene on the entire roof and bricks were placed over the polyethylene on the outer wall in order to give temporary protection to the roof and walls. Holes were developed in the outer walls of the veranda. The shop was in a dilapidated condition. Report was supported by photographs Ex.P-5/16 to Ex.P6/30 and negatives Ex.PW6/1 to Ex.PW6/15.

The local commissioner, PW-5-Ramesh Bharadwaj, appointed by the Rent Controller also gave a report inconsonance with Ex.P5. PW-5-Ramesh Bharadwaj specifically deposed that he went to the spot on 07.09.1998 pursuant to being appointed Local Commissioner on 02.09.1998. He inspected the spot in the presence of the parties. The premises were found to be in a dilapidated condition. PW-5, proved Ex.P-5, his report, rough site plan Ex.P-6 and notice Ex.P-7. Not even a suggestion has been put to PW-5 regarding the premises being in a good or repairable shape.

I do not find any merit whatsoever in the argument raised by learned counsel for the petitioner that no reliance should be placed upon the said report Ex.P-5 on the ground that the report was prepared without any kind of notice to the tenant. It is relevant to note that the petitioner

while testifying as DW-1 before the learned Rent Controller has himself admitted that the local commissioner visited the spot and he prepared the report while sitting outside the shop. There is abundant evidence on record to show that the premises in question are unfit and unsafe for human habitation. Reliance by learned counsel for the petitioner on **Jawahar Lal's** case (Supra) is clearly misplaced. This Court in the said decision specifically observed that the report is ordinarily to be accepted by the Court appointing the local commissioner unless any inherent defect could be pointed out therein. No such defect has been pointed out in this case.

Similarly, reliance on **Surinder Nath Vs. Shri P.N. Dhawan, 1981 (1) R.C.R. (Rent) 704** is also misplaced to suggest that merely because the petitioner is still inhabiting the said premises, the same cannot be unfit and unsafe. Judgement of this Court in **Satinder Kumar Gupta's** case (Supra) relied upon by learned counsel for the petitioner is of no avail as it is observed in the said judgement itself that even natural wear and tear of building that has rendered it unfit and unsafe would be a good ground for securing eviction. The ground is to be examined irrespective of whether such a condition arose by the tenant's conduct or otherwise. Moreover, it is not to be that a building must fall so that it can be described unfit and unsafe for human habitation.

There is indeed no evidence led by the petitioner-tenant to rebut the evidence led by the landlords. Another argument raised is that the landlords did not step into the witness box, therefore, an adverse inference should be drawn against them. In this case, both the learned

Courts below have rightly observed that in the present case where the condition of the building was to be proved, an adverse inference due to the landlord not stepping in the witness box, cannot be drawn against them. Reliance has been rightly placed by the learned Appellate Authority, **Panipat on Prem Singh Vs. Sh. Darbari Lal and others, AIR 2000 (P&H) 83.**

It is trite to note that in exercise of revisional jurisdiction, there should not be any interference until and unless the findings returned by the learned Courts below are found to be perverse or vitiated by any illegality or infirmity. No such illegality or perversity is apparent in this case.

No other argument has been raised.

Revision petition is accordingly dismissed and impugned judgement dated 20.08.2002, passed by the learned Rent Controller, Panipat, as well as judgement dated 31.01.2003, passed by the learned Appellate Authority, Panipat, are upheld.

In so far as the contempt petition is concerned, learned counsel for the petitioner fairly states that the accused in FIR No. 272 dated 01.04.2012, under Sections 457, 427, 34 IPC, stand acquitted as no evidence was led in support of the prosecution case.

Keeping in view the facts and circumstances of the case, rule qua the respondents, is discharged.

September 21, 2018
s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No