

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

CR No. 4274 of 2013(O&M)

Date of decision:13.5.2019

Om Parkash

.....Petitioner

VERSUS

Amrinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Promila Nain, Advocate for the petitioner.

Mr. Vineet Chaudhary, Advocate for the respondents.

REKHA MITTAL, J.

Challenge in the present petition has been directed against concurrent findings of fact recorded by the Courts whereby the petitioner has been ordered to be evicted from the tenancy premises i.e. house bearing house tax No.1295/7922-B/IV, Naddi Mohalla near Congress Bhawan, Ambala City on the ground that the property has become unfit and unsafe for human habitation.

The respondents through their General Attorney Harcharan Singh filed the eviction application seeking ejectment of the petitioner inter alia on the grounds of arrears of rent; petitioner is creating nuisance for the landlords and neighbours; tenant has materially impaired the value and utility of the demised premises and the building is unfit for human habitation.

As the eviction has been allowed on the ground of building being unfit and unsafe for human habitation, it is necessary to extract the

material averments in this regard, raised in sub-para (iv) of para 7 of the application originally filed, reads thus:-

"That the building in question is old one and is unfit for human habitation and the landlords want to reconstruct the same after demolish(sic) it."

An application was filed for amendment of the eviction application and by way of the proposed amendment, the respondents sought to amend sub-para (iv) of para 7 that has been taken note of by the Rent Controller while narrating the facts in para 2 despite the fact that application for amendment of the eviction application was dismissed and the order has attained finality. However, by way of amendment, the respondent sought to plead that the building in question is more than 100 years old and has outlived its life i.e. the walls are in dilapidated condition made of old bricks and its plaster has become fluffy almost all the places and leaves the walls at a slight strike of hammer. The bonding between brick work and plaster has been ceased. The foundation and roof is broken at many places and the only remedy left is to demolish the structure completely.

During pendency of proceedings before the Rent Controller, the Court appointed Sh. Adit Aggarwal, Advocate, as local commission vide order dated 09.06.2009 with the directions to visit site/tenanted premises after giving notice to both the parties/their counsel and report regarding existing state of affairs qua the tenanted premises. Sh. Adit Aggarwal, Advocate submitted report dated 19.08.2009. Later, an application was filed by the petitioner/respondent for appointment of Civil Engineer for measurement of size of bricks of all the walls as the local

commission had stated in his report that the premises is made of small bricks but the bricks are of standard size measuring 9" x 4½" x 3". The Rent Controller appointed Sh. Surender Kumar, JE of B&R as local commissioner to inspect the building, measure the bricks of the walls and assess age and condition of the building. Surinder Singh, ASDE, submitted report dated 06.09.2010 along with annexures and photographs.

The present petitioner did not file any objections against the reports submitted by the aforesaid local commissioners nor made a request for their cross examination to challenge correctness of the reports submitted by them except that after receipt of report submitted by Sh. Adit Aggarwal, Advocate, the petitioner filed an application for appointment of a Civil Engineer as local commission which was acceded to by the Rent Controller.

The Courts, on consideration of the reports submitted by the local commissioners, arrived at a conclusion that the building is unfit and unsafe for human habitation and accordingly, ordered for ejectment of the petitioner on the aforesaid ground.

The question for consideration is whether the reports submitted by the local commissioners can form the basis for arriving at a finding that the building has become unfit and unsafe for human habitation and orders passed by the Courts needs affirmation by holding that the same do not suffer from material irregularity or illegality.

To answer this question, it is necessary to extract relevant portions of the reports recording observations with regard to certain portions being in good condition and others being not so. Sh. Adit

Aggarwal, Advocate, made a report with regard to building being unfit and unsafe on the following premises:-

- a) The tenanted premises was made up of small bricks.
- b) The plaster of the walls was broken at places and also peeled off.
- c) There was moisture and dampness in all the rooms.
- d) The roof of all the three rooms was smeared with mud in order to prevent leakage during rains.
- e) Construction of the tenanted premises appeared to be quite old.

His observations favouring the petitioner are to the following effect:-

- a) The ceiling of the tenanted premises was made up of karies and fatties appears to be in good condition.
- b) The floor of the tenanted premises was cemented.

The first observation made by Sh. Adit Aggarwal, Advocate that the tenanted premises is made of small bricks gets falsified and belied in view of the report of Sh. Surinder Singh who has reported that bricks used in the house are of standard size i.e. 9" x 4.5" x 3", as has been contended by the petitioner in his application for appointment of another commissioner. The local commissioner Sh. Adit Aggarwal has not taken any photographs nor made any markings on the rough site plan showing the plaster of walls being broken or peeled off or moisture and dampness in the rooms.

Surinder Singh's observations with regard to unfit/unsafe condition of the building are to the following effect:-

- a) Wooden batten of kitchen has sagged (photograph No.4)
- b) There is dampness and moisture on walls (photograph No.5).
- c) Joinery of house is very old and not in very good condition.
- d) Floor of courtyard is cracked.
- e) Condition of bathroom in open courtyard is very bad. There is no door in bathroom. Bathroom is without plaster, roof.
- f) Moisture/dampness has appeared on walls (photograph No.8).
- g) In toto, house is in dilapidated condition and required extensive repairs/major repairs to make it worth living.

His observations with regard to certain other portions of the building read as follows:-

"Roof of room No.1 and 2 is of wooden battens/ballies with wooden phatties and mud phaska above on fatties. Kitchen roof is wooden battens/ballies with tiles and mud phaska on tiles. Top of roof of room No.1 and kitchen is katcha and is without tile terracing and small vegetations (grass) has grown on mud phaska (photograph No.2). Roof of room No.2 is tile terraced (photograph No.3). Condition of batten of room 1 and 2 seems to be in good condition. Flooring of rooms is

conglomerate cement flooring and appears to be in good condition."

The plea sought to be raised by the respondents that building is more than 100 years old gets falsified and belied from the report submitted by Surinder Singh as he stated that house appears to be approximately above 40 years old. Similarly, plea sought to be added by the respondents that the building is made of small bricks also gets demolished from the report submitted by Sh. Surinder Singh.

The report prepared by Sh. Adit Aggarwal becomes doubtful for the reason that he has tried to tow the line of the respondents/eviction petitioners by stating that the building is made of small bricks. This fact further creates a doubt if Sh. Adit Aggarwal has actually visited the site and made his report on the basis of actual status of the building in question. Failure of Sh. Adit Aggarwal to depict the exact places where the plaster of the walls has broken and peeled off or moisture and dampness also makes it difficult to rely upon his report to reach at a conclusion that the building has become unfit and unsafe for human habitation. In this view of the matter, it can safely be held that the Courts have committed a grave error rather perversity by relying upon report of Sh. Adit Aggarwal to record a finding that building is unfit and unsafe for human habitation.

Sh. Adit Aggarwal has reported that roof of all the three rooms was smeared with mud in order to prevent leakage during rains but no such fact has been recorded by Sh. Surinder Singh, ASDE. Sh. Surender Singh has not reported that there was any damage to roof of the rooms or kitchen or a crack much less hole therein. The only observation made by Sh. Surinder Singh is that wooden batten of kitchen has sagged.

He has not specifically reported the extent of sagging and number of wooden battens that have actually sagged. Perusal of the photograph No.4 does not give a clear picture either with regard to extent of sagging or the number of battens affected. Assuming that wooden battens of roof of kitchen have sagged, the same can be repaired/replaced with a small expenditure. This fact cannot lead to conclusion that building has become unfit and unsafe for human habitation.

Sh. Surinder Singh has observed that joinery of the house is very old and not in good condition. There is no explanation as to what does he mean by this joinery of the house or the same being not in good condition. He, for the reasons best known, did not click any photograph in order to show the joinery and its condition. As such, the observations made by Sh. Surinder Singh with regard to joinery of the house are vague, thus, cannot be attached much weightage. The dampness and moisture on walls depicted in photograph No.5, in my considered opinion, cannot possibly lead to conclusion that building is unfit and unsafe for human habitation. The Court can take judicial notice of the fact that even in the newly constructed buildings, there comes moisture and dampness but for that reason, can it be said that the building is unfit and unsafe for human habitation.

Sh. Surinder Singh has made a report with regard to bathroom in open courtyard. As this bathroom has no door and the walls are without plaster, the walls are bound to have moisture and dampness. Assuming and accepting that open bathroom in courtyard of the house is not in good condition, it does not ipso facto makes the building unfit and unsafe for human habitation. Both the Courts did not advert in detail to the

observations made by the local commissions while recording its finding that building has become unfit and unsafe for human habitation.

In the light of discussion made hereinbefore, I find myself unable to concur with findings of the Courts that the petitioner is liable to be evicted on the ground of building being unfit and unsafe for human habitation. I would hasten to add that the eviction application was filed way back in the year 2003. There is nothing on record suggestive of the fact that till date the petitioner/tenant has moved an application before the Rent Controller for repair of the building in question or has made any repairs at his own costs/expense. Analyzed from any angle, it is difficult to sustain findings of the Courts allowing eviction on the ground of building being unfit and unsafe for human habitation. That being so, findings of the Courts on the aforesaid aspect suffer from perversity and set aside.

No other point has been raised.

For the foregoing reasons, the petition is allowed. The eviction order passed by the Rent Controller and affirmed in appeal is set aside. As a natural corollary, application filed by the respondents seeking eviction of the petitioner is dismissed with costs throughout.

MAY 13, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

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