

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

1. Civil Revision No. 6538 of 2015(O&M)
Date of Decision: April 12 , 2019.

Ashok Kumar PETITIONER(s)

Versus

Sunil Mohan Gupta RESPONDENT (s)

2. Civil Revision No. 5425 of 2015(O&M).

Sunil Mohan Gupta PETITIONER(s)

Versus

M/s Ram Chander Narinder Kumar Jain and others RESPONDENT (s)

3. Civil Revision No. 5426 of 2015(O&M).

Sunil Mohan Gupta PETITIONER(s)

Versus

Brij Bhushan RESPONDENT (s)

4. Civil Revision No. 3209 of 2016(O&M).

Sunil Mohan Gupta PETITIONER(s)

Versus

Pankaj Chaurasia RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. S.K.S.Bedi, Advocate
for the petitioner in CR No.6538 of 2015 and
for the respondents in CR No.3209 of 2016,
CR Nos.5425 and 5426 of 2015.

Mr. Narender Pal Bhardwaj, Advocate
for the respondent in CR No.6538 of 2015 and
for the petitioner in CR No.3209 of 2016.

Mr. Sanjay Jain, Advocate
for the petitioner in CR Nos.5425 and 5426 of 2015.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This judgment shall dispose of Civil Revision No.6538 of 2015 (Ashok Kumar v. Sunil Mohan Gupta), Civil Revision No.3209 of 2016 (Sunil Mohan Gupta v. Pankaj Chaurasia), Civil Revision No.5425 of 2015 (Sunil Mohan Gupta v. M/s Ram Chander Narinder Kumar) and Civil Revision No.3209 of 2015 (Sunil Mohan Gupta v. Brij Bhushan).

All the abovesaid revision petitions were heard together as landlord in all the petitions is the same. The demised premises in question comprise of small shops/Khokha on property No.3759-61, Hill Road, Ambala Cantt. and the same was let out by the landlord to various tenants.

Six petitions were filed by the landlord under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking ejectment of all the tenants from the respective demised premises on the ground that the building in question was constructed more than 90 years ago. The same is claimed to be in a dilapidated condition with various rooms forming part of the building on the ground floor as well as on the first floor having already fallen while remaining portions are in a precarious condition. Roof of various rooms are stated to have bent down to a dangerous limit and could collapse at any time, the same have

wooden Karris with Phattas which are totally lying rotten or eaten away. Projection (Chhajja) of the property in question is also stated to be bent down to a dangerous limit. It is pleaded that during the floods and heavy rains in July, 2010, a major portion of the building including the projection (Chhajja) was broken down and is dangerous to human life. The entire property, it is pleaded, was in a deplorable condition, unsafe and unfit for human habitation. Condition of the structure, it is pleaded, was in such a bad condition that the Municipal Corporation, Ambala issued notices to the petitioner-landlord for demolishing the same to avoid loss of human life. As different portions of the building were in occupation of different tenants, the petitioner-landlord is unable to comply with the notices of the Municipal Corporation. Landlord, it is pleaded, in all the petitions had requested the tenants to vacate the building, but to no effect. Hence, the petitions were filed seeking ejectment of all the tenants.

Additional grounds were taken in petition No.28 of 2011 (subject matter of CR No.5425 of 2015) to the extent that the tenants therein had acquired possession of another property No.3758, Hill Road, Ambala Cantt., which comprised of two shops, besides, a shop on the main Ambala-Jagadhri Road and they are alleged to be conducting business therein, in the name and style of M/s Parashvanath Traders. It was pleaded that the tenants were merely hanging on to the premises for extraneous considerations as the other shops, which have subsequently been taken by the tenants, were much bigger and sufficiently reasonable for their requirement in the urban area of Ambala. Landlord has also raised the ground of non-payment of rent, besides, the building in question unfit and unsafe for human habitation. Ejectment of the tenants was thus prayed for.

Petitions were resisted by the tenants. Various preliminary objections were raised in the reply. Averments on merits were controverted. Condition of the building as averred by the landlord was denied. It was contended that the landlord himself is residing in the property in question, therefore, building cannot be unfit and unsafe for human habitation. In petition No.106 of 2011 (subject matter of CR No.3209 of 2016), it is pleaded by the tenant that he was conducting his business of sale of Pan, Bidi etc. in the wooden khokha provided by the landlord and he was keeping his goods in a portion measuring about 2 ft. x 3 ft. below the staircase. It was contended that the portion (Khokha) which was in his possession, is not a part of the building of the landlord, rather it is on the municipal land. Dismissal of the petitions was prayed for.

Learned Rent Controller, Ambala in all the petitions i.e., petition No. 40 of 2011 (subject matter of CR No.6538 of 2015) decided on 07.10.2013, petition No.28 of 2011 (subject matter of CR No.5425 of 2015) decided on 19.08.2013, petition No.114 of 2011 (subject matter of CR No.5426 of 2015) decided on 06.01.2014 and petition No.106 of 2011 (subject matter of CR No.3209 of 2016) decided on 27.05.2014, ordered ejectment of the tenants.

Appeals were filed by all the six tenants. Two of the appeals were dismissed by the learned Appellate Authority, Ambala. One of the tenants, is in revision before this Court (subject matter of CR No.6538 of 2015) and the other tenant, namely, Brij Bhushan Bajoria whose appeal was dismissed by the learned appellate authority vide decision dated 01.08.2015, has accepted the verdict and the proceedings qua him have admittedly become final.

In respect to the other petitions i.e., petition No.28 of 2011 (subject

matter of CR No.5425 of 2015, petition No.114 of 2011 (subject matter of CR No.5426 of 2015) and petition No.106 of 2011 (subject matter of CR No.3209 of 2016), learned Appellate Authority allowed the appeals filed by the tenants, consequently, dismissing the petitions filed by the landlord for eviction of the tenant, primarily on the ground that the landlord himself was living in a portion of the first floor of the building, therefore, it could not be countenanced that the building had been rendered unfit and unsafe for human habitation. Non-payment of rent was not proved in respect to petition No.28 of 2011 (subject matter of CR No.5425 of 2015 and petition No.114 of 2011 (subject matter of CR No.5426 of 2015)).

Civil Revision No.3195 of 2016 filed by the landlord against the order of the learned Appellate Authority allowing the fourth tenant's appeal, was disposed of as infructuous as it was brought to the notice of this Court that the tenant was no longer running his business in a Khokha on the platform of the property in question and it was stated on behalf of the tenant that in case the said tenant is still using electric energy from any meter/sub-meter of the demised premises, the same would be disconnected forthwith.

Learned counsel for the landlord (petitioner in three petitions and respondent in one petition) has raised similar arguments in all the petitions to the effect that that the building in question, is proved on record, to be unfit for human habitation. It is likely to collapse at any stage. Reference has been made to report of the building expert, Anil Kumar, Civil Engineer. It is submitted that the reports relied upon by the tenants are not credible inasmuch as the report is not in respect to the entire building as a whole, whereas the reports submitted by the building

expert examined by the landlord projects the true picture. Moreover, inspection of the building was conducted in the presence of all the concerned parties. Site-plan and the photographs on record prove that a major portion of the building is in a deplorable state and on the verge of collapse. Furthermore, after the floods which occurred in July 2010, the situation has become even worse. It is contended that there is a real and palpable danger to human life, in case any major natural calamity strikes the area. Notices issued by the Municipal Corporation are duly proved on record, therefore, the impugned orders passed by the learned Appellate Authority, whereby appeals filed by the tenants have been allowed, be set aside and order dated 04.08.2015 passed by the learned Appellate Authority, which is the subject matter of CR No.6538 of 2015 be upheld.

Mr. S.K.S.Bedi, Advocate, learned counsel for the tenants in all the petitions, vehemently argues that the tenants in this building have been conducting their business for the last so many years. Reports submitted by the expert examined by the landlord are not worthy of any credence, whatsoever. It is submitted that the expert, Anil Malik has talked about mud mortar being used, which in itself is not correct because at the time when the building was constructed, it was the use of Chuna and Surkhi which was prevalent. It is further contended that the report submitted by building expert, Anil Malik is beyond pleadings as there is nothing on record to indicate the number of rooms etc. which are detailed in the said report. Learned counsel for the tenants would further contend that the report, in question, does not specify the exact portion in possession of the various tenants. It is further submitted that notices issued by the Municipal Corporation cannot, in any manner, advance the case of the

landlord because there is nothing on record to show that any action, whatsoever, was taken by the Municipal Corporation pursuant to the said notices. Moreover, the notices themselves have not been proved on record by the landlord in accordance with the provisions of law. It is submitted that the said notices are not, per se, admissible on the ground that the report on the basis of which the said notices were issued, is not produced on record. It is submitted that the landlord has admitted that he himself is living on the first floor of the building. Thus, it is not open to him to contend that the building is unfit for human habitation. It is further contended that age of the building by itself is not proof of its health. It is thus prayed that all the revisions petitions filed by the landlord be dismissed and Civil Revision No.6538 of 2015 filed by the tenant be allowed.

I have heard learned counsel for the parties and have also perused the record.

There is no dispute regarding relationship of landlord and tenant between the parties in all the cases. It is also borne out from the record that the tenanted portions are part of property No.3759-61, situated at Hill Road, Ambala Cantt., which is admittedly spread over a large area. Learned Rent Controller in all the ejectment petitions has directed eviction of the tenants primarily on the ground that the building is rendered unfit and unsafe for human habitation. These petitions were filed by the landlord seeking eviction of the tenants from the said building taking similar pleas. Ejectment of the tenants in all the six petitions was ordered by the learned Rent Controller vide orders passed on various dates.

It is noticed that landlord has examined a building expert, i.e., PW2

Anil Malik, Civil Engineer to prove the dilapidated and inhabitable condition of

the building in all the cases. PW2 Anil Malik has deposed in all the petitions to the extent that the entire property No.3759-61, Hill Road, Ambala Cantt is big building which was constructed more than 90 years back. He stated that the tenants are in possession of separate portions and the same are depicted distinctly in the site-plan prepared separately for the ground floor as well as for the first floor. PW2 Anil Malik inspected the entire building and separate reports in each of the cases was filed. He proved his report as well as the site-plan. Condition of the building was specifically described by him. It is mentioned in the report (Ex.PW2/A) in petition No. 40 of 2011 (subject matter of CR No.6538 of 2015) that the premises were inspected in pursuance to permission granted by the court before visiting the building in dispute. Notices were duly sent to the concerned parties. Presence sheet was also prepared at the site. Detail of the premises which are in occupation of each of the tenants, was separately mentioned in each of the cases. Description of each separate portion finds a specific and distinct presence in the report.

Detailed position of the entire building has been given in this report, which I have perused. It is specifically mentioned that the brick work of the part of portion on the ground floor is of mud mortar, bricks are eroding due to their age and mud mortar is coming out of the walls in the powder form. Walls are unable to bear the superstructure load. Roof of the rooms has been constructed with wooden planks (phatties), wooden karries over steel girders. Most of the wooden karries and phatties are infested with white ants and termites, therefore, have become unserviceable. Steel girders used in the roof of the rooms are stated to be rusty with age. Dampness was observed in the building. A big tree of about

25 ft. with a girth of 3 ft. is stated to be growing in room No.7. Some of the rooms are stated to have fallen and are open to the sky, with rubble (Malba) lying on the floor.

Similarly, condition of the building on the first floor was also detailed. Part of the terrace at the first floor level is shown to be fallen. Part of the projection was bent. Opinion of the said expert, reads as under:-

- The building as a whole is absolutely unfit and unsafe for human habitation.
- The building in dispute has outlived its normal span of life and is beyond repairs.
- The building is giving a shabby look being very old and in dilapidated condition.
- The only remedy is to demolish it completely and reconstruct the same from the foundation level raising the floor level about 2' from the road level

Graphic photographs of the said building, depicting its deplorable condition, are available on record.

Tenants in petition No. 40 of 2011 (subject matter of CR No.6538 of 2015), petition No.28 of 2011 (subject matter of CR No.5425 of 2015) and petition No.114 of 2011 (subject matter of CR No.5426 of 2015) also examined an expert, namely, Mr. N.S.Gill, ex-Assistant in Cantt. Board, Ambala as RW2 who submitted his report (Ex.R2/A) in the said case. The said expert, RW2 N.S.Gill opined that the disputed portion of the building is safe and sound. He did not submit his report regarding the entire building, but only in respect to the particular shop/premises in possession of the respective tenants.

It is relevant to note that the building expert, PW2 Anil Kumar Malik, Civil Engineer duly examined in all the separate proceedings against the tenants, has given a comprehensive report in respect to the premises in question

after proper inspection of the entire building, pursuant to permission granted by the court. It is also a matter of record that inspection was carried out in the presence of the parties. A perusal of the report by PW2 Anil Malik in all the cases reveals that the disputed portion in each case is separately mentioned and the detailed condition thereof is mentioned as well. I do not find any merit in the argument raised by learned counsel for the tenants that said report should not be relied upon as there is a mention of use of mud mortar. A perusal of the report reveals that apart from the use of mud mortar, the use of 'chuna surkhi' is also clearly mentioned. To say that due to mention of mud mortar, the entire report is rendered incredible, is unjustified. It is to be noticed that mention has fairly been made of a roof of lobby on the ground floor in a particular portion made of the Reinforce Brick Concrete ('RBC'), while stating that it seems to have been laid about 32-35 years ago. As mentioned above, the report clearly reveals that the building in question is absolutely unfit for human habitation. In fact, it is the report of the expert examined by some of the tenants which cannot be relied upon as the said report is in respect to only a part of the building. Further, the said expert RW2 N.S.Gill in his cross-examination has admitted that the construction of the premises is of second class category and roof of some rooms in the building has fallen.

Moreover, the photographs on record, which I have minutely examined, clearly reveal the dilapidated and deplorable condition of the building in question and the said photographs clearly show that allowing the building to stand in the present state, is an invitation to disaster. The photographs, in question, are admitted to be correct by the tenants when confronted therewith.

The photographs depict the deplorable condition of the premises. The sagging roof and dilapidated condition is apparent. Learned Rent Controller has clearly observed that the landlord would demolish the building and not let it out on rent in the position in which it is as on date. Moreover the landlord, it is submitted, is bound as per the notices of the Municipal Corporation to take necessary steps in this regard and there is no question of an attempt to raise the rent or let out the premises again. It is relevant to note at this stage, that there is nothing on record to indicate that the notice issued to the landlord by the Municipal Corporation to demolish the building in question is incorrect or procured as argued. Mere inaction of the municipal authorities cannot lead to an inference of the notice to be incorrect. Similarly, I do not find any merit in the argument that the said notices are inadmissible in evidence as the basis or foundation of such notices was not proved. The same is rejected.

It has been held by this Court in **Bachh Raj Jain v. M/s C.R.Trading Co., 2002(2) RCR 417** while relying upon a Division Bench judgment of this Court in **Sardarni Sampuran Kaur and another v. Sant Singh and another, 1983 PLR 448**, that in case substantial part of the integrated larger building has become unsafe and unfit for human habitation, a tenant can be ejected from the demised premises forming part thereof, despite the fact that the particular portion in his possession may not be so. It is further a settled position of law that the landlord is not expected to wait for the building to collapse before seeking eviction of the tenant from the premises.

Argument raised by learned counsel for the tenants, that as the building is still intact till date, therefore it is not unfit and unsafe for human

habitation, has been suitably answered in **Amarjit Kaur and others v. Tilak Raj and another, 2012(2) RCR (Rent) 386** in para 4 thereof which reads as under:-

“4. Unless a building is really of archaeological value, there is no reason why a landlord should allow the building to go into total ruins and allow it to be preserve in that state. The learned counsel appearing on behalf of the petitioner passionately argues that after all the building has not completely collapsed, although, the case has been instituted in the year 1983 and the fact that the building has survived this litigation itself shows that the condition of the building as stated to be unfit and uninhabitable cannot be true. We must only see that if the building had not completely collapsed during this long litigation, the parties have been fortunate that extent. It can never be a wish of the Court and of the parties that the building that is said to be uninhabitable must be such as it would collapse and cause casualties to litigants during its long journey in Court.”

Needless to say, it is for the landlord to prove that the building has outlived its utility and life and not that it has started crumbling. In the present case, it is clearly proved on record that the building in question has outlived its utility and is unsafe and unfit for human habitation.

Merely because, the landlord has stated that he was residing in a portion of the first floor, cannot be a ground to non-suit him. Perusal of the statement of the landlord in the case of Ashok Kumar (subject matter of CR No.6538 of 2015) reveals that the landlord stated that he was residing on a portion of two rooms only on the first floor, which was not situated over the part of the building, the ground floor of which was in possession of the said tenant.

Moreover, as noted earlier, a bare perusal of the photographs in question (which stand admitted) is telling of the factual position and the ground reality. Premises in possession of the various tenants are duly proved to be unfit and unsafe for human habitation.

Therefore, keeping in view the facts and circumstances of the case, impugned orders dated 04.04.2015 (subject matter of CR No.5425 of 2015), dated 04.04.2015 (subject matter of CR No.5426 of 2015) and dated 27.05.2014 (subject matter of CR No.3209 of 2016) passed by the learned Appellate Authority, Ambala are set aside and that of the learned Rent Controller, Ambala are maintained. Order dated 04.08.2015 (subject matter of CR No.6538 of 2015) passed by the learned Appellate Authority, Ambala is upheld.

Consequently, CR No.5425 of 2015, CR No.5426 of 2015 and CR No.3209 of 2016 are allowed and CR No.6538 of 2015 is dismissed with no order as to cost. The tenants are however afforded two months from today to handover vacant and peaceful possession of the demised premises to the landlord.

April 12, 2019.
'om'

(LISA GILL)
JUDGE

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