

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

**CR No. 6267 of 2018(O&M)
Date of Decision:04.12.2019**

Shammi Kapoor and another

.....Petitioners

Versus

S. Balbir Singh and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Adarsh Jain, Advocate
for the petitioners.

LISA GILL, J.

Petitioners/tenants are aggrieved of decision dated 27.08.2013, passed by the learned Rent Controller, Yamuna Nagar at Jagadhri, whereby petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short 'Act') has been allowed as well as judgement dated 20.04.2018 passed by the learned Appellate Authority, Yamuna Nagar at Jagadhri, whereby appeal preferred by the petitioners, has been dismissed.

Ejectment of the petitioners has been ordered on the ground of impairment of the value and utility of the building by removal of the wall separating two shops and with the merger of the area with the adjoining building without the consent of the landlords.

Brief facts as pleaded in the petition under Section 13 of the Act preferred by the respondents-landlords seeking ejectment of the tenants (present petitioners) from the shop in question as described in the petition

are that relationship of the landlord and tenant is claimed to be existing between the parties. The property in question was originally owned by Ishar Kaur, the mother of the respondents. After her death, all her legal heirs including the respondents-landlords stepped into her shoes and became the landlords/owners of the shop in question. It is pleaded that the western wall of the shop was removed illegally by the tenants and the area merged with that of the adjoining building without consent of the landlords, which has weakened the structure of the shop as well as the first floor of the building. 'Verandah' in front of the shop, is stated to have been included due to which the structure of the building was affected. Moreover, identity of the shop of the petitioners was lost, thereby impairing its value. Legal notice dated 02.08.2008 was stated to have been served upon the tenants. Ultimately, the present petition was filed.

Respondents resisted the petition while taking various preliminary objections. It is admitted that the demised premises were taken on rent from Ishar Kaur. After her death, fresh agreement, it is stated was entered between the tenants with Ishar Kaur's son namely Paramjit Singh. It is stated that the western wall of the demised shop was removed with the consent of Paramjit Singh and that an RCC lintel was placed by removing the 'Karis' with the permission of landlord-Paramjit Singh. Change of user is denied. Relationship of landlord and tenant was also denied. Dismissal of the petition was sought.

Rejoinder was not filed. From the pleadings of the parties, following issues were framed by the learned Rent Controller, Yamuna Nagar at Jagadhri:-

1. Whether there is relationship of landlord and tenant, between the petitioners and the respondents?OPP
2. If issue no.1 is proved, whether the respondents are liable to be ejected on the ground that the respondents have materially impaired the value and utility of the shop in dispute?OPP
3. Whether the respondents are liable to be ejected on the ground of change of user?OPP
4. Whether the present petition is not maintainable? OPR
5. Whether the petitioners are estopped from filing the present petition by way of their act and conduct?OPR
6. Whether the petitioners have not come to this Court with clean hands?OPR
7. Relief.

Evidence was led by both the parties in respect of their respective claims/stands.

Learned Rent Controller, Yamuna Nagar at Jagadhri, on considering the facts and circumstances as well as the evidence on record concluded that the relationship of landlord and tenant existed between the parties. Reference was made to the statement of the tenant, who testified as RW-1 to the effect that he used to pay rent, sometimes to Paramjit Singh and sometimes to respondents-landlords. It is further observed that the common wall between the demised shop and the adjoining shop was removed. The roof was changed by removing '*Karis*' and replacing it with the RCC lintel. It is concluded that material alterations and the basic structure of the shop was carried out without the consent of the landlords. Accordingly, ejectment of the petitioners-tenants was ordered.

Appeal preferred by the tenants was dismissed by the learned Appellate Authority, Yamuna Nagar at Jagadhri, vide impugned judgement

dated 20.04.2018.

Aggrieved therefrom, present petition has been filed by the petitioner-tenants.

Learned counsel for the petitioners vehemently argues that mere removal of the common wall and replacing the roof after removal of '*Karis*' by itself cannot lead to a conclusion that there is a material alteration which has impaired the value and utility of the building. In the present case, the landlords, it is submitted have not examined any building expert etc., to prove that there is any material impairment in the value and utility of the property. The value of the property, in-fact, has been enhanced. It is argued that in the absence of specific evidence to this effect, both the learned Courts below have erred in ordering ejectment of the petitioners on this ground. It is thus prayed that the present revision petition be allowed and the impugned judgments dated 27.08.2013 and 20.04.2018, passed by the learned Courts below be set aside. Consequently, petition u/s 13 of the Act filed by the respondent-landlords be dismissed throughout.

I have heard learned counsel for the petitioners and have gone through the file with his assistance.

Ejectment of the petitioners was ordered by the learned Rent Controller, Yamuna Nagar at Jagadhri on 27.08.2013. It is a matter of record that the demised premises were taken on rent by the petitioners from Ishar Kaur. It is correctly held by both the learned Courts below that the relationship of landlord and tenant is duly proved on record. The property in question is proved to have devolved upon the respondents along with Paramjit Singh. The present respondents-landlords, Balbir Singh and

Prithipal Singh, claimed that the demised property fell to them in a family settlement. The admission of the petitioner in respect to the payment of rent is relevant. Therefore, both the learned Courts below have rightly concluded that relationship of landlord and tenant between the parties existed.

At this juncture, it is pertinent to note that the petitioners-tenants have taken a specific stand that the alterations, were carried out with the permission of Paramjit Singh. The tenant, in his cross-examination has stated that written permission was obtained from Paramjit Singh. However, the said permission was admittedly never produced on record. It is submitted by learned counsel for the petitioners that the adjoining shop belongs to none other, but Paramjit Singh, the brother of the respondents, therefore, removal of the wall between the two shops cannot amount to material alterations. The said argument is clearly devoid of any merit. This is so for the reason that the wall admittedly removed by the petitioners is the one separating the two shops. Identity of the property, is clearly lost. It is indeed a material alteration, which has led to impairment of the value of the property in question. Replacement of the roof by removal of '*Karis*', is not in dispute. Learned Appellate Authority, Yamuna Nagar at Jagadhri, has correctly observed that once the identity of the demised premises is lost by removal of the wall separating it from the adjoining shop, non-examination of an expert, is not material. Needless to say, value of the property being diminished and impairment thereof in the given circumstances of this case, is clearly substantial and significant in a situation where the very identity of the property is altered.

Both the learned Courts below have rendered well reasoned and

logical decisions on a sound appreciation of evidence on record. It has been held by the Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 378** that this Court while exercising revisional jurisdiction would normally not interfere in concurrent finding of fact until and unless it is shown that there is gross misreading of evidence or ignoring of material evidence on record which renders the finding of the courts below to be perverse.

Learned counsel for the petitioners is unable to point out any illegality, infirmity or perversity in the impugned orders dated 27.08.2013, passed by the learned Rent Controller, Yamuna Nagar at Jagadhri and order dated 20.04.2018 passed by learned Appellate Authority, Yamuna Nagar at Jagadhri, which calls for interference by this Court in exercise of revisional jurisdiction.

No other argument has been raised.

There is a delay of 1 day in filing of this revision petition. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this revision petition is rendered academic. Application is disposed of accordingly.

Petition is accordingly dismissed with no order as to cost. No orders need to be passed in any other pending application in view of the dismissal of the revision petition.

04.12.2019
s.khan

[LISA GILL]
Judge

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