

**CR No.7286 of 2018 (O&M) 1**

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

**CR No.7286 of 2018(O&M)  
Date of Decision: 12.04.2019.**

M/s Dwarka Dass Bhimsen and another

.....Petitioners

Versus

Deepak Khanna

..... Respondent

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. M.S.Sachdev, Advocate  
for the petitioners.

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**LISA GILL, J(Oral).**

Petitioners (tenants), are aggrieved of order dated 10.04.2015, passed by the learned Rent Controller, Jalandhar, whereby their eviction from the demised premises has been ordered on the ground of premises being unsafe and unfit for human habitation. Petitioners are also aggrieved of the judgement dated 03.11.2016, passed by the learned Appellate Authority, Jalandhar, whereby the petitioners appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that petition under Section 13 of the East Punjab Urban Rent Restriction Act, (for short 'Act') was filed by the landlord (respondent in this petition) seeking eviction of the tenants (present petitioners) on the ground that the shop in dispute is unsafe and unfit for human habitation as the same is more than 100 years old and has outlived its life and utility. It was pleaded that earlier Faqir Chand, Om Parkash and Ram Lubhaya were owners of the property.

The shop as detailed in the petition was given on rent to the respondents at

the rate of ₹1000/- per month. It was pleaded that the respondents were in arrears of rent w.e.f., 01.07.2008. A portion of the roof of a shop in the same building, under the tenancy of another tenant-Inderjit is claimed to have fallen down. Batons of the roof elsewhere in the building, and the shop in dispute are claimed to be precariously hanging besides being termite infested, liable to collapse anytime. Walls of the building built with Nanakshahi bricks are stated to have developed cracks and the entire building is unsafe and unfit for human habitation. It is further pleaded that despite request by the petitioner, respondents failed to pay the rent or vacate the demised premises. Hence the petition was filed.

Petition was contested by the respondents. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was pleaded that shop in dispute was rented out by Ram Lubhaya to appellant Dwarka Dass (father of Bhimsen). After death of Dwarka Dass, Bhimsen inherited the tenancy of the said shop. The firm arrayed as tenant has no concern with the tenancy of shop. Ram Lubhaya died in the year 2002 leaving behind his wife Pushpawati as his sole surviving legal heir. Deepak Khanna, it is asserted is only an agent of Pushpawati as he used to collect rent from tenant only on behalf of Pushpawati, being her agent. It is denied that Deepak Khanna is the landlord. Rent of demised premises is claimed to be paid upto March 2009, but respondent has not issued receipt thereof. It is pleaded that the shop in dispute is safe and fit for human habitation. Amended written statement was allowed to be filed on 08.07.2014, substituting the name of Pushpawati with Mayawati. Dismissal of the petition was sought.

Rejoinder was filed. Following issues were framed by the learned Rent Controller, Jalandhar:-

1. Whether the respondents are in arrears of rent as prayed for in the petition?OPP
2. Whether the property in dispute is unfit and unsafe for human habitation?OPP
3. Whether the petition is not maintainable?OPR
4. Whether the petitioner has no locus standi to file the present petition as he is neither owner of the shop nor landlord of the respondents?OPR
5. Relief.

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

Learned Rent Controller, Jalandhar, on appreciation of the evidence on record and considering the facts and circumstances of the case, concluded that the relationship of tenant and landlord stood established and the ground of the building being unsafe and unfit for human habitation, was duly proved on record. It is noted that another tenant in the same building was ordered to be evicted on the same ground. Accordingly, petition was allowed. Ejectment of the respondents was ordered.

Appeal filed by the respondents has been dismissed by the learned Appellate Authority, Jalandhar vide decision dated 03.11.2016.

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

Learned counsel for the petitioners vehemently argues that both the learned Courts below have grossly erred in concluding that the premises are unfit and unsafe for human habitation on the ground that the wooden planks of the roof have fallen and some of the batons are curving downwards and are not in proper shape. Moreover, the building expert examined by the petitioner has categorically opined that the building is fit and safe for human habitation. His report has been wrongly ignored. It is further submitted that ejectment of another tenant in a shop which forms the part of the building by itself, cannot be a ground for ejectment of the present petitioner. Moreover,

reliance by the learned Rent Controller on a report by a Building Expert in proceedings pertaining to the other tenant, who has not been examined in this case, could not be taken into consideration. Learned counsel for the petitioners relies upon the judgement of the Hon'ble Supreme Court in **Piara Lal Vs. Kewal Krishan Chopra, 1988(3) SCC 51** and judgements of this Court in **Mulakh Raj and another Vs. Jugraj Singh, 2008(1) R.C.R (Civil) 50** and **Bharat Singh Vs. Ashok Kumar 2003(2) PLR 785**. It is thus prayed that this petition be allowed and judgments passed by the learned Courts below, be set aside.

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

Both the learned Courts below have directed ejectment of the petitioner (tenant) from the demised premises on the ground of the building being unsafe and unfit for human habitation.

I have perused report Ex.A-4 by Raminderjit Singh Bawa, Building Expert, who has deposed as AW-2. Premises were inspected in the presence of the parties as reflected in the attendance sheet Ex.A-2. It is specifically mentioned that shop no.4, in possession of the present petitioner was unsafe, unhealthy and unfit for human habitation. It is stated that a portion of the roof stands demolished on the north-east corner of the backside portion of the shop as reflected in photographs P-9 and P-10. Wooden planks (Balas) were destroyed (eaten) by white ants as reflected in photographs P-11 and P-12. It is further noticed that the shop in question consists of three portions. One of the arches in between the three portions is flailing. The whole load of the wall came towards the said arch, which could collapse at any time, leading to a major accident and loss of human lives, as reflected in photograph P-16. The shop which is stated to an integral part of the entire

building could not be constructed individually. AW-2, has also detailed the condition of the rear side, first floor and second floor of the building in a graphic manner duly supported by specific photographs, which are available on record.

It is rightly observed by the learned Rent Controller that photographs taken by RW-2, R.K.Verma, Civil Engineer and Building Expert, examined by the present tenant, have been intentionally clicked in a manner which do not reveal the entire position. RW-1 has admitted the hole in the roof of the shop in Ex.P-10. The evidence on record bears out the fact that the shop in question is part of the entire building in question. RW-2, the expert examined by the present petitioners has admitted the construction of the building with Nanakshahi bricks which is indicative of the age of the building. Ex.PY, is a copy of judgement dated 21.02.2015, between the present respondent-landlord and some other tenants in a shop, which is a part of the building in which the demised shop is admittedly located. Learned Rent Controller in decision dated 21.02.2015 in the proceedings between the present landlord and another tenant has referred to a report submitted by an expert from the department of PWD (B&R), Jalandhar appointed by the Court in the said proceedings on 04.10.2012. Rana Partap Mittu, Sub Divisional Engineer, Provincial Sub Division No.1, PWD (B&R Branch), Jalandhar Cantt., had submitted his report Ex.PW2/41 in the said proceedings along with photographs, wherein it is revealed that the building as a whole in general is in a totally dilapidated condition. Roots of trees growing on the first and second floor were found along the walls of the building. Wooden batons are infested by white ants. Structural cracks along with sagging beyond permissible limit was detected. It is specifically opined that the building WE-283 at Bazar Bansawala, Gur Mandi, Jalandhar, is

unfit and unsafe for human habitation. Order against the other tenant is informed to have attained finality. Be that as it may, a perusal of the report, Ex.A-4 submitted by AW-2, as well as the photographs which are available on record, in the present case, reflects the dilapidated condition of the building in question in graphic detail. A perusal of the photographs which are admittedly of the premises in question reveal that it is a disaster waiting to happen.

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.”

Relationship of landlord and tenant has been duly proved on record. Petitioner has admitted handing over of rent to the respondent. There is no evidence on record to show that the respondent was an agent of Mayawati as contended. No serious argument has been raised by learned counsel in this respect. Both the learned Courts below in the given facts and circumstances of the case have rightly ordered ejectment of the petitioners on the ground of the premises being unfit and unsafe for human habitation.

At this stage, it is noticed that this petition challenging decisions dated 10.04.2015 and 03.11.2016, passed by the learned Courts below, has been pending since 19.09.2018, when this revision petition was filed with an application under Section 5 of the Limitation Act, for condonation of delay of 602 days in filing of the revision petition. Learned counsel for the petitioners on a specific query of the Court reveals that the petitioners are still in possession of the demised premises and execution proceedings have yet not attained finality.

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. In my considered opinion both the learned Courts below have rendered well

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reasoned and logical decisions on a sound appreciation of evidence on record which brook no interference. Judgements relied upon by learned counsel for the petitioners, are not applicable to the facts and circumstances of the case.

No other argument has been raised.

Learned counsel for the petitioners is unable to point out any illegality, infirmity or perversity in the impugned orders dated 10.04.2015, passed by the learned Rent Controller, Jalandhar and order dated 03.11.2016 passed by learned Appellate Authority, Jalandhar, which calls for interference by this Court in exercise of revisional jurisdiction.

There is a delay of 602 days 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 has been rendered academic. Application is accordingly disposed of.

Petition is accordingly dismissed with no order as to cost.

**12.04.2019**  
s.khan

**[LISA GILL]**  
**Judge**

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.