

Civil Revision No.4364 of 2019

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

Civil Revision No.4364 of 2019
Date of Decision: 17.07.2019

Devender Singh and another

...Petitioners

Versus

Sunil Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Ivneet Singh Pabla, Advocate, for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Tenants through this revision have laid challenge to judgment of the Appellate Authority dated 30.04.2019 affirming the order of learned Rent Controller dated 28.02.2017, whereby they were ordered to be evicted from the demised shop on a petition filed by respondent-landlord under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short the 'Act').

Undisputed fact are that demised shop was rented out to the predecessor-in-interest of the petitioners-tenant namely Rewati Nandan in the year 1953-54 at a monthly rent of ₹20/-, which increased and finally on 01.01.1993, it was settled at ₹150/-. After the death of original tenant, petitioners being his legal heirs/sons stepped into his shoes and thus became tenants over the demised shop. Petitioners in the year 1998 filed a petition under Section 12 of the Act against the respondent-landlord to repair/replace the roof of the demised shop pleading that due to storage of

some *malba* by the respondent-landlord over its roof, some portion of the

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same had collapsed and remaining may collapse at any time. In the said petition a local commissioner was appointed, who vide his report Ex.PW3/D reported that demised shop consists of two portions, out of which Southern portion marked by letters 'A B E F' in the site plan was very old construction. Roof of the same had fallen at some places. Consequently, lot of debris was lying on the ground floor of this portion. Northern portion marked by letters 'B C D E' was intact. However, lot of '*malba*' was lying on the roof of this portion. From the above report of the local commissioner, it was evident that some portion of the demised shop towards Southern side had fallen. According to the petitioners, on account of some compromise between them and respondent-landlord, the said petition was got dismissed as withdrawn in the year 1998 itself. After 16 years thereafter, landlord filed an eviction petition under section 13 of the Act against the petitioners, which after holding a full-fledged trial was accepted by the Rent Controller vide order dated 28.02.2017, thereby directing the petitioners to vacate the demised shop within two months and hand over actual vacant physical possession of the same to the respondent-landlord.

Being aggrieved, petitioners approached the Appellate Authority, but remained unsuccessful as their appeal too was dismissed vide judgment dated 30.04.2019.

Learned counsel for the petitioners *inter alia* contends that filing of eviction petition after 16 years of the local commissioner's report Ex.PW3/D was nothing but a *mala fide* device of the respondent-landlord to illegally evict the petitioners. It was incumbent upon the Rent Controller to appoint some fresh local commissioner to ascertain the existing state-of-

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affairs qua demised shop before ordering eviction of the petitioners-defendant inasmuch as there was no cogent and convincing evidence with the Rent Controller that the demised shop had allegedly become unfit and unsafe for human habitation. Receipt of rent by respondent-landlord after 1998 till filing of eviction petition from the petitioners in itself was a circumstance to dismiss his eviction petition, because same proves that demised shop was fit for human habitation.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioners, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this revision.

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioners has not been able to show any such infirmities in the judgment/order of both the authorities below.

It is admitted fact that predecessor-in-interest of the petitioners, namely, Rewati Nandan took the demised shop on rent in the year 1953-54 i.e. around 63 years ago. Ordinarily, normal life of a building is 50-60 years or may be more depending upon the quality of construction and various other factors. In the instant case, there is no material on the record showing that demised shop had any special construction increasing its life more than 50-60 years.

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Local commissioner's report obtained in earlier petition filed by petitioners under Section 12 of the Act, as discussed above, speaks about falling of roof of the demised shop at certain places. Therefore, judicial notice of the fact can be taken that a roof in the shape of lantern, if, had fallen at some places, its remaining portion would also definitely fall, it being a compact block.

One of the grounds taken by respondent-landlord to evict the appellant is that tenanted shop was constructed in mud around 80 years back. The masonry work in mud, with the passage of time, change of weather and rains etc. the same had rendered unsafe and unfit for human habitation. Cracks had appeared in its walls leaving good space; its joints had opened; the walls were bulging; floors had perished; supports were given to the walls behind the doors; iron angles on which slabs of the roofs are placed have completely damaged and rusted; plaster of the walls had peeled off at many places; walls were not able to bear the load out of plumb. A part of roof had fallen down in the year 1998 due to heavy rain and remaining portion may fall at any time. Therefore, tenanted premises had outlived its life and may collapse at any moment endangering human life.

Above stand of the respondent-landlord was supported by local commissioner vide his report Ex.PW3/D. Thereafter, 21 more years have further elapsed. No contrary evidence was led by the petitioners. Therefore, it is apparent on the record that demised shop has become completely unsafe and unfit for human habitation. However, out of sheer greed to retain possession of the demised shop being on meagre rent against prevailing market rent, petitioners have taken false plea that demised shop

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was still safe. But contrary to it, respondent-landlord has been well-able to prove his plea that demised shop had become unfit and unsafe for human habitation.

I have gone through order of learned Rent Controller and judgment of Appellate Authority as well and find no illegality or perversity in the same.

Dismissed.

Since time granted to the petitioners to vacate the demised shop has already expired, therefore, they are given further 15 days' time from today to vacate the same, failing which petitioners shall be liable to pay mesne profits to the respondent-landlord to the tune of ₹40,000/- per month from the date of eviction order of learned Rent Controller till actual possession.

July 17, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No