

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5182 of 2015 (O&M)
Date of Order:19.03.2020

Shiv Dayal and another

...Petitioners

Versus

Khushi Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Sr. Advocate, with
Mr. Abhishek Dhull, Advocate,
for the petitioner.

Mr. Sunil Chadha, Sr. Advocate, with
Ms. Swati Verma, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

The petitioners-landlords have filed this revision petition under sub-Section (6) of Section 15 of the Haryana Urban Control of Rent and Eviction Act, 1973 (hereinafter referred to as 'the 1973 Act'), challenging correctness of the order passed by the learned Appellate Authority reversing the order of eviction of the tenant-respondent passed by the learned Rent Controller.

In a nutshell, the landlords, who are two in number, filed an application seeking eviction of the respondents-tenants from Shop No.1369 on following three grounds:-

- (1) tenants have not paid the rent @ Rs.27.50/- per month along with house tax;
- (2) Shop is unfit and unsafe for human habitation as the construction is more than 100 years old and there are several cracks in the roof and the walls of the tenanted premises;

- (3) Size of the family of the landlords has increased. Shiv Dayal, landlord is having two sons, namely, Umesh Kumar and Avinish Kumar. Umesh Kumar had expired leaving behind three children, Neha, Ashish and Shantun, whereas Avnish Kumar has a son Dushyant. Other landlord Shiv Charan has three sons, namely, Chander Shekhar, Hari Mohan and Hari Shankar. Chander Shekhar and Hari Mohan further have two children each whereas Hari Shankar has a son. The petitioners are in possession of Shop No.1368 and small area which bears a separate Municipal No.1367 which is insufficient for running their business. The landlords do not have any other commercial space/shop for running their business. Hence, the shop is required for personal use of Chander Shekhar and Hari Shankar.

Tenants-respondents contested the petition and pleaded that the construction of the shop in question is not 100 years old but 66-67 years old. It was denied that the construction is of 'C' category. Personal requirement of the landlords was also disputed.

Learned Rent Controller on appreciation of evidence ordered ejectment of the tenants on two grounds:-

- (1) The building has become unfit and unsafe for human habitation;
- (2) The landlords require the premises for reconstruction and thereafter utilise the same for running business by Chander Shekhar and Hari Shankar, both son of Shiv

Charan.

Learned Appellate Authority, however, Chose to reverse the judgment of the learned Rent Controller and dismissed the eviction petition filed by the petitioners-landlords.

That is how this revision petition has been filed.

It is undisputed that father of the respondents late Sh. Munni Lal was inducted as a tenant in the tenanted premises by Sh. Bhim Singh son of Chunni Lal in the year 1940. Thereafter, he remained tenant under Someshwar Nath Bhargav and subsequently under Smt. Chimma Devi since 30.09.1963. After the death of Smt. Chimma Devi, the petitioners, who are sons of Smt. Chimma Devi become the owners and the landlords.

No doubt, a previous petition filed by Smt. Chimma Devi dated 24.06.1972 seeking eviction of the tenant was dismissed on 28.02.1977. In that petition, one of the ground on which eviction of the tenant was sought that the building has become unfit and unsafe. Against which the appeal and the revision petitions were also dismissed.

The present petition under Section 13 of the 1973 Act before the Court of Rent Controller was filed on 20.09.2005 i.e. after a period of 33 years of the first petition.

In order to prove their case, landlords have examined 24 witnesses and produced voluminous record in support thereof. On the other hand, the tenants have examined 16 witnesses and produced various documents in support thereof.

Let's first examine the plea of bonafide requirement of the landlords.

As noted above, eviction of the tenants has been sought on the

ground that Chander Shekhar and Hari Shankar intend to open and run their business from the tenanted premises.

Learned Appellate Authority has held that Chander Shekhar and Hari Shankar are already settled in life as Chander Shekhar is working as an agent in the Insurance Company, whereas, Hari Shankar is employed with HDFC Bank.

In the considered view of this Court, both the reasons given by the learned Appellate Authority are wrong. An agent in a United Insurance Company cannot be said to be a permanent employee. An agent is entitled to commission on the number of policies which an agent manages to sell. Such avocation is dependent upon your performance. In any case, an agent working for the Insurance Company cannot be said to be full time occupation. Further, it is permissible for a person to change its occupation and settle for something better and nice.

Similarly, Hari Shankar was employed as Sales Executive on contractual basis on 02.01.2007 with HDFC Bank i.e. after filing of the petition before the Court of Rent Controller. The total salary payable to him is Rs.4500/- per month along with a conveyance allowance of Rs.2500/- per month. Such employment is again not a permanent employment. Still further, Chander Shekhar as well as Hari Shankar have appeared in evidence as PW20 and PW22 and have deposed that they intend to start business from the tenanted premises.

Learned Appellate Authority has observed that the bonafide requirement of Chander Shekhar and Hari Shankar is not genuine on the ground that when Chander Shekhar appeared, he stated that he along with Hari Mohan and Hari Shankar intend to open a shop whereas in the

pleadings the requirement of Chander Shekhar and Hari Shankar has been pleaded. In the considered view of this Court, the learned Appellate Authority was not correct while drawing such adverse inference. Further, learned Appellate Authority has held that the landlords have failed to prove that their children are dependent upon them in any manner. It may be noted here that the 1973 Act does not restrict the landlord to apply for eviction of a tenant with respect to the bonafide requirement of his dependent children only.

Learned Appellate Authority has further erred in observing that the landlords are in possession of a big shop. It may be noted here that the total area of the premises is 16 feet 10 inches front with length of 60 feet (16'.10"x60'). The landlords are in occupation of 11 feet x 60 feet along with a small area in the back of the shop in possession of the tenants, whereas the tenant is in occupation of 5 feet 10 inches 30 feet. It has been pleaded that two members of the family, namely, Avnish Kumar and Hari Mohan, are already working in Shop No.1368. The landlords are partners in the firm Laxmi Narayan Bishambar Dayal, trading in utensils for the last 100 years. Learned Appellate Authority has further erred while observing that the grand children of the landlords are minor and, therefore, the requirement of the landlords is nothing but a whimsical desire. In the considered view of this Court, it was not appropriate on the part of the learned Appellate Authority to make such observation particularly when the bonafide requirement with respect to children, who are major, was pleaded not of grand children.

Now let's examine second ground i.e. the building has become unfit and unsafe for human habitation.

Both the courts have come to a conclusion that the building in question is more than 100 years old. The entire building consisting of 2 part has a common roof. The premises in possession of the tenant was inspected by two building experts, one each deputed by the landlords and the tenants. The report submitted by the expert deputed by the landlords is Ex.PW17/B. He is a Graduate Engineer from IIT, New Delhi. He has extensively studied architectural engineering especially with respect to buildings. He is working as a licenced architect with the Municipal Committees of Panipat, Rewari and Mahindergarh for 35 years. Relevant part of his report is extracted as under:-

“The front mander(parapet) of the shop made of small bricks in lime mortar has vertical cracks and is in ruined condition. Moreover the wooden slipper supporting this mander over the front gate is also in ruined condition and is likely to crumble down.”

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The iron and wooden girders are in very bade condition. The roof of these bays No.2 & 3 are supported in the south on the parting brick wall in lime mortar. This wall is merely 4.5” thick- never designed so think for such construction. This wall is made of small bricks in lime mortar. Moreover being old one and decayed, this wall is most likely to crumble down under the weight of over roof. Over the temporary parting by iron sheet- 9' high, there is 3' parting by 'amm' wooden battens. The northern wall of shop no.1369 has signs of rainy water leakage and it has dampness especially in rear portion. This dampness is shown by letter DM in my plan.

6. *The flooring of both of the shops are in dilapidated condition. It was originally made of lime concrete. Now there are pits and pits hither and thither. Some pits are covered temporarily by putting some simple bricks in*

them.”

“7. The original walls of the shops are made of small bricks called Nanakshahi (Mughal type) in lime mortar. They were having lime plaster. According to Decay Theory “materials decompose and perish with the passage of time”. The lime mortar has become powder-like and plaster has almost fallen down from all the walls of both the shops. The bricks have decayed, they have fallen down from the walls. The bays No.5 & 6 of the shop No.1368 have dome type (arch type) roofs prevalent in very olden days. From these reasons and from my technical tests, I concluded that the shops in question are very old-more than 100 years old.

8(a) The bay No.4 of the shop No.1368 has roof supported on wooden kurries and wooden kharianjas supporting lime concrete terrace like those of bays No.1, 2 and 3. The kurries of these bays No.1 to 4 are not square in section. They are not straight and regular in section. They were chjiseled by hand and they were in use in olden days when mechanical sawing faciliteis were not in existence. Thus the shop No.1369 having a temporary partition of iron sheet is of C class construction and shop no.1369 is of inferior B class construction. The kurries and kharianjas decayed with the passage of time. They are in ruined condition. The kurries have bulged and bent down causing depression in the roofs. The depression in the roofs have caused cracks in the them especially north-southways horizontal in direction. The cracks are shown in my plan by letters C-1 to C-11 in red colour. Some of the cracks are through and through. The rainy water accumulates on the depressed (pond like) roofs and wall through these cracks. The signs of water leakage in the ceilings of the shops. The kurries and kharianjas are eaten by white ants. Some of the kharianjas have fallen down from the ceilings. The

dome type roofs are in dilapidated condition. The lime mortar from some places have fallen down from these roofs and small bricks used in their construction are barely visible there. These roofs have also developed cracks marked by letters C-11 to C-14 shown in red colour in my plan. Due to rainy water leakage through roofs, there is heavy dampness in the shops especially in dome type roof bays. The dampness is causing irritant smell and suffocation. The racks and depression in the roofs are dangerous sign in the roofs and they are likely to crumble down at any time.

- (b) Due to decay, the lime mortar has lost its binding strength. The plaster has fallen down from almost all the walls-if some plaster is visible it is just like powder-like and falls when touched and scratched. From some places, the bricks have fallen from the walls making hollow places in them. There have developed vertical cracks especially at joints or corners of the walls. Some of the cracks are shown in my plan of ground floor by letters C-1 to C-11 in red colour. At some joints these cracks are upto 1" wide. A long dangerous horizontal crack 20' long shown by letter C-12 a red colour in my plan of ground floor has developed in the southern wall of the shop due to caving of the foundations of the walls. There are some cracks in the parapets as shown in my plan.*
- (c) The chhajja common to both the shops in their front is in dangerous condition and may fall down any time causing casualty to even the passers-by in the busy bazaar.*
- (d) The stair case is in dilapidated condition. Most of the steps of stone have decayed and broken. There are dangerous cross cracks in the walls of the stair case. It is unfit for use.*
- (e) The wall previously existing on the roofs of the shops have fallen down and their remains are still existing. It*

means falling of building has started.

Both of the shops are in dilapidated condition. Their walls have through and through dangerous cracks. The roofs have through and through dangerous cracks and have become pond like. They are leaking badly. The kurries and kharianjas are in ruined condition and some of the kharianjas have fallen down. The whole of the building is in crumbling down position.”

Learned Appellate Authority has ignored this report while observing that previous petition filed in the year 1972 was dismissed and the order was upheld by the High Court. The appellate authority has further ignored the report of a building expert on the ground that the so called expert examined by the landlords is only a mechanical engineer.

This court is of the considered opinion that both the reasons assigned by the appellate authority are erroneous. It has specifically been stated by Mr. Satya Pal, a Building Expert, examined by the landlords that he has done extensive study of architectural engineering specially for buildings during his study from IIT at New Delhi. He has a rich experience of 35 years working as a licenced architect with Municipal Committees of Panipat, Rewai and Mahindergarh.

Still further, it is apparent from the relevant part of the report that he has not only submitted a report with regard to tenanted premises but also opined about the condition of premises in possession of the landlords. Correctness of the aforesaid report could not be impeached by the tenants, when Mr. Satya Pal appeared in evidence to prove his report.

Still further, the learned Rent Controller has rightly held that the report submitted by the building expert examined by the tenant is perfunctory and does not help the case of the tenants.

Learned appellate authority has also erred in observing that since the previous petition was dismissed and there is no further evidence that condition of the building has deteriorated thereafter.

It may be noted here that the previous petition was filed in 1972, whereas the present petition was filed after a period of 33 years i.e. in the year 2005. Subsequent dismissal of appeal or revision against the judgment of the learned Rent Controller would not in any way help the tenants unless it is proved that during the pendency of appeal or revision petition, the condition of the building was re-assessed.

Still further, learned appellate authority has also erred in observing that the property has not yet fallen, although, long period has elapsed.

In the considered view of this Court, for proving that the building has become unfit and unsafe, it is not necessary that the building must have already fallen. On careful perusal of the report, which has been extracted above, it is apparent that the building has outlived its life and hence required to be demolished and reconstructed.

Keeping in view of the aforesaid facts, the present petition is allowed. The order passed by the appellate authority is set aside and that of the learned Rent Controller is restored. The tenant is granted two months' time to vacate and hand over vacant possession of the tenanted premises to the landlords.

19th March, 2020
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(ANIL KSHETARPAL)
JUDGE

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