

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1938-2020(O&M)

Date of decision:05.01.2021

Amritsar Health and Hospitality Services

.....Petitioner

Versus

Jatinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Salil Sagar, Sr. Advocate with
Mr. Samarth Sagar and
Mr. Sankalp Sagar, Advocates for the petitioner

Mr. Prateek Sodhi, Advocate for respondent nos. 1 to 4

Mr. Nitin Thatai, Advocate for respondent no.6

Mr. D.K.Gupta, Advocate for respondent no.7.

ANIL KSHETARPAL, J.

Through this revision petition filed under Article 227 of the Constitution of India, the judgment debtor prays for setting aside orders dated 11.2.2020, 13.2.2020 and 5.3.2020 passed by the Executing Court, Amritsar.

It is not in dispute that the petitioner took on lease a premises from the respondents herein as per lease deed dated 5.9.2013. The lease was with respect to vacant land with existing building constructed thereon. However, the lessee was permitted to construct further, in order to run a hospital. As per the lease deed the tenant was made liable to pay Rs.4,76,056/- per month as rent. The landlords filed a petition under Section 13 of the East Punjab Urban Rent Restriction

Act, 1949, seeking eviction of the lessees from the tenanted premises. It was specifically pleaded that the landlords were already running a resort/marriage palace from the premises before giving it on lease. The eviction was sought from the tenanted premises including land with building constructed thereon. An order of eviction of the tenant was passed by the Rent Controller on 10.5.2019. An appeal against the same is pending however, no interim protection has been granted. As per the order passed, the tenants have failed to pay the rent which has been assessed as Rs.1,35,49,625/-.

In the execution petition, warrants of possession were issued and possession of the tenanted premises has been taken over by the landlord. The tenant filed an application for recall which has been dismissed vide order dated 5.3.2020.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book. It may be noted here that two miscellaneous applications have been filed for impleadment as party by IIFL Finance Ltd. and Punjab National Bank.

Learned senior counsel appearing for the petitioner contends that the order of eviction is without jurisdiction and therefore, the warrants of possession is required to be recalled. He submits that since only the land was given on lease and the building was constructed by the lessees therefore, the 1949 Act would not be applicable. He in support thereof relies upon a Full Bench judgment passed in Hari Parshad Gupta vs. Jatinder Kumar 1982 (1) RCR 138.

On the other hand, learned counsel for the respondent while drawing attention of the Court to the lease deed, has submitted that the

land alongwith the building constructed thereon was given on lease. He drew attention of the Court to clause 5, 10 and 18 of the lease deed in support of his arguments.

After having considered the arguments of the learned counsel for the parties, this Court is of the considered view that there is no substance in the revision petition. On careful examination of provisions of the East Punjab Urban Rent Restriction Act, 1949, it is apparent that the building has been defined in Section 2 sub section (a) whereas 'rented land' has been defined under Section 2(s). The 'rented land' means any land given on rent separately for the purpose of being used principally for business or trade. Therefore, the argument of the learned counsel that if only land is rented, the 1949 Act is not applicable is not correct. In any case, on careful reading of the lease deed, it is apparent that land alongwith building constructed thereon was leased out. Still further, when the landlords filed petition seeking eviction, it was specifically pleaded that the landlords were previously running a marriage palace-cum-resort from the premises in dispute and whatever building has been constructed, the same was also given on lease alongwith the land. It was prayed that the eviction order of the land and the building be passed. The aforesaid order was so passed. Therefore, at this stage, in the execution petition, the petitioner cannot be permitted to object to the execution petition on this ground. Still further, the appeal filed by the lessees is pending. In these circumstances, it would not be appropriate for the Court to finally adjudicate on this aspect. It is suffice to observe for the purpose of decision of the revision petition, that there is no substance in the argument of the learned senior counsel

for the petitioner.

Learned senior counsel has relied upon a Full Bench judgment in Hari Parkash Gupta (supra). The facts of the aforesaid case are entirely different. In that case, the landlord constructed two rooms, one on his own land and second on the land taken on lease from the Municipality. Both the rooms were rented out to the tenant. Thereafter, tenant filed an application under Section 12 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for permission to allow him to carry out repairs at the cost of the landlord. In those proceedings, it was contended that since the land belonging to the Municipality therefore, it is exempted from applicability of the Rent Act, therefore, the rent Act is not applicable. The Full Bench after considering all aspects of the matter held that the building belongs to a private individual and therefore, the Rent Act is applicable. It was further held that building and the rented land are two separate and distinct entities. However, in the present case, as noticed above, when the lease deed was executed, the land alongwith building constructed thereon was given on lease.

In view of the aforesaid discussion, there is no substance in the petition.

Hence, dismissed.

All miscellaneous applications shall stand disposed of in terms of this judgment.

05.01.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE