

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

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**CR-2787-2018 (O&M)
Decided on : 16.05.2022**

Rattan Lal

... Petitioner(s)

Versus

Nitya Nand

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. J.P. Sharma, Advocate
for the petitioner(s).

Mr. Munish Gupta, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J. (Oral)

The instant revision petition has been preferred by the petitioner (hereinafter referred to as 'tenant') against the concurrent findings recorded by both the Rent Controller as well as the Appellate Authority, vide orders dated 04.12.2015 and 16.02.2018, respectively.

2. The respondent-landlord (hereinafter referred to as 'landlord') filed a petition u/s 13 of the Haryana Urban (Control of Rent & Eviction Act), 1973, seeking eviction of the tenant from a Godown (hereinafter called 'demised premises') situated at Nai Mandi, Narnaul. The pleaded case of the landlord may be noticed as thus:-

That he had rented out the demised premises to the tenant vide Rent Agreement dated 06.09.1986, at a monthly rent of Rs.400/-. Rent was thereafter, enhanced with mutual consent in May 1991, October 1996, October 2001 and finally it was enhanced to Rs.800/- p.m. on 06.11.2007. The status of the tenant was that of a statutory tenant, since no fair rent had been agreed upon between the parties, hence, Rs.800/- p.m. was the

statutory rent. The demised premises had been rendered unfit and unsafe on account of the acts of the tenant who had removed stone slabs and wooden battons. Besides this, the landlord also alleged that the tenant had not been paying the rent in time. Even though, he had been requested the tenant time and again to handover the vacant possession of the demised premises to the landlord, so that he could bring down the demised premises since it was in a dilapidated condition and raise a new construction, however, the tenant had flatly refused to do so.

3. On being put to notice, the tenant did not deny that the demised premises was taken on rent vide Rent Note dated 06.09.1986 and that presently he was paying a rent of Rs.800/- p.m., however, he asserted that the rent which was being paid by him, was the agreed fair rent between the parties. He denied that the demised premises was in a dilapidated condition and thus, unfit for human habitation. He further denied that he had removed wooden battens, slabs etc., as alleged by the landlord. Rather, he submitted that the demised premises was in the same condition, as it was, when it was taken on rent in the year 1986.

4. On the basis of the pleadings and other evidence led, the Rent Controller allowed the rent petition of the landlord and decreed it with costs by holding him entitled to get the vacant possession of the disputed godown/demised premises, from the tenant within two months of its order. The appeal preferred before the Appellate Authority by the tenant was also dismissed.

5. Learned counsel for the tenant *inter alia* contended that the landlord miserably failed to prove his case by way of any cogent evidence that the demised premises had become unfit for human habitation and was

in a dilapidated condition. It was submitted that there were other tenants, who were residing on the upper floors of the demised premises and *qua* them ejection had been sought by the landlord on grounds of personal necessity. Hence, an adverse inference should have been drawn against the landlord by both the Courts below, which they, however, erred in not doing. He further submitted that there was no evidence on record that it was on account of any acts of the tenant that the demised premises had been damaged. Learned counsel submitted that no doubt a local commissioner was appointed by the Court below, who after inspection of the demised premises, gave a report (Ex.P1) that the place was unsafe and unfit, however, both the Courts below, ignored the evidence of RW-2/ P.R. Gupta, a building expert, who after inspecting the demised premises, submitted his report Ex.RW2/B, which was at complete variance with that of the local commissioner. Learned counsel while drawing the attention of the Court to the report of RW-2, submitted that he had categorically reported that the condition of the demised premises, was good and it was fit for human habitation. Learned counsel, thus, submitted that in the circumstances, the reliance placed upon the report of the local commissioner by both the Courts below, while passing the impugned judgment and decree, was on the face of it erroneous and deserved to be set-aside.

6. *Per contra*, learned counsel for the landlord while opposing the submissions made by the counsel opposite, submitted that the impugned judgments could not be faulted with and were well reasoned ones, being supported by enough cogent evidence led on record to show that the condition of the demised premises was extremely bad and it could cave in at any time which in turn could also lead to loss of lives etc.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. The landlord while filing the rent petition sought eviction of the tenant primarily on the grounds of non-payment of rent and the demised premises having been rendered unsafe and unfit for human habitation on account of the conduct and acts of the tenant himself as he had removed wooden battens, stone slabs etc.

9. A local commissioner was appointed by the trial Court to visit the demised premises and give his report *qua* the condition of the demised premises. Pursuant thereto, Sub-Divisional Engineer, L.R. Saini along with Sumer Singh Dahiya, Junior Engineer, visited and inspected not only the demised premises, but also the entire building inside which the demised premises was located in the presence of both the parties. As per the report of the local commissioner (Ex.P1), the building where the demised premises is located, is almost 50 to 60 years old; the demised premises i.e. the godown had a conglomerate flooring, the roof of the demised premises was laid with the help of wooden battens. Red stone slabs with the help of one R.S. joint in the centre, were holding the entire weight of the roof. The local commissioner, categorically reported that the roof of the demised premises had become depressed due to some seepage in the bathroom. In addition the wooden battens, which were on the roof, had also developed cracks. Not only this, it was reported that the red stone slabs too, had been disturbed. It was also reported by local commissioner in its report that the side walls of the demised premises had visible vertical cracks with a peepal tree growing and protruding from one of the walls of the demised premises. The aforesaid report was also supported with documentary evidence in the shape

of photographs (Ex.P3 to Ex.P7). In short, the local commissioner categorically reported that the entire property of the landlord including the demised premises had become unsafe and unfit for human habitation and thus, it was necessary that the tenant be evicted from the same. No doubt, a building expert RW-2/P.R. Gupta also inspected the building including the demised premises and gave a report contrary to the report submitted by the local commissioner, however, during his cross-examination, this witness admitted that while inspecting the building, he had not mentioned the age of the building in his report. Still further, on being probed and questioned, he very vaguely stated that the age of the building would be around 40 to 45 years. In his cross-examination, he stated that he had taken 3 to 4 bricks from the demised premises for testing. However, when he was pointedly asked as to what technique had been employed to test the bricks, and give a report that the building was not unsafe, he failed to give any satisfactory reply much less details *qua* the same. Not only this, this witness though deposed that the building including the demised premises was in a good condition, however, strangely he admitted that he had not even taken any sample of the lime mortar during the inspection. Hence, it does raise eyebrows and a big question mark about the authenticity and the reliability of the report submitted by RW-2 and as to on what basis he declared the demised premises safe and fit. This Court has no hesitation to observe that the report of the RW-2/P.R. Gupta, building expert, cannot be relied upon, because firstly as per his own admission, he is not a professionally qualified civil engineer, but only a building expert and secondly, the photographs (Ex.P3 to Ex.P7), placed on record by the local commissioner, reveal an altogether different story. It may also be pointed out here that since RW-2

was engaged by the tenant himself, the possibility of this witness giving a favourable report is clearly discernible for reasons but obvious.

10. As a sequel to the above, this Court does not find any merit in the present revision petition. Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

May 16, 2022

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No