

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

**CR No.2398 of 2013
Pronounced on: 04.09.2023.**

Kailash Chand Goyal

....Petitioner

Versus

Gulshan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Nitin Kant Setia, Advocate
for the petitioner.

Mr. Parveen Hans, Advocate
for respondents No.1 and 3.

VIKRAM AGGARWAL, J.

1. The unsuccessful landlord has approached this Court assailing the judgments passed by the Rent Controller as also the Appellate Authority vide which, the petitioner-landlord was non-suited in an eviction petition filed by him under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Rent Act) seeking eviction of the respondents-tenants from a shop situated on Bus Stand Link Road, Hansi, District Hisar (hereinafter referred to as the tenanted premises) on the ground of non-payment of rent and the tenanted premises having become unsafe and unfit for human habitation.

2. In the eviction petition, it was claimed that the petitioner is the owner/landlord of the tenanted premises (fully described in the petition). It was under the tenancy of one Sh. Laxman Dass. After the death of Sh. Laxman Dass, the respondents had become the tenants, being his legal heirs. The rent was

Rs.125/-per month. Eviction was sought on the ground of non-payment of rent since 01.11.2006 and the tenanted premises, which was an integral part of a big buildings Marked as A. C. D. and F in the site plan had outlived its life and had become unsafe and unfit for human habitation. It was averred in the eviction petition that the entire building, of which the tenanted premises was a part was more than 50 years old, was made of bricks in mud mortar, was in a dilapidated condition, some portion of the building had already fallen down and the remaining could fall at any time, the adhesive material had lost its strength, the entire building and the tenanted premises had developed big cracks, the wooden batons (Karries) had got bent and had also been damaged as having been infested with termites, the floor level of the entire building had become 3 feet lower than the level of the road, a fatal accident had already taken place wherein one Hari Chand had died on account of electrocution as rain water had accumulated and that even a notice bearing serial No.4252 dated 27.07.2006 had been issued by the Municipal Council, Hansi stating that the entire building including the tenanted premises had become unsafe and unfit. As per the petition, by way of the said notice, the petitioner had been directed to get the entire building demolished with a view to avoid any further loss.

3. The eviction petition was resisted by the respondents-tenants. The grounds of eviction, as pleaded, were denied. It was averred that the respondents-tenants were not in arrears of rent and that the tenanted premises had not become unsafe and unfit for human habitation.

4. The Rent Controller framed the following issues for adjudication:-

1. Whether the respondent is liable to be ejected from the room in question on the ground as mentioned in the petition?OPR

2. *Whether the petitioner has no locus-standi and cause of action to file the present petition? OPR*
3. *Whether the petitioner is estopped to file the present petition by his own act and conduct? OPR*
4. *Whether the petition is not maintainable in the present form? OPR*
5. *Whether the court has got no jurisdiction to try and entertain the present petition? OPR*
6. *Relief.*

5. Parties led their respective evidence. After consideration of the same, the Rent Controller dismissed the eviction petition holding that the petitioner could not prove that the respondents-tenants were in arrears of rent. The petitioner could also not prove that the tenanted premises had become unsafe and unfit for human habitation. The decision of the Rent Controller was affirmed by the Appellate Authority, leading to the filing of the present revision petition.

6. I have heard learned counsel for the parties and, with their assistance, have perused the records which were duly summoned.

7. Learned counsel for the petitioner vehemently submitted that both the Courts below had committed a grave error by non-suiting the petitioner-landlord despite the fact that the case had been proved by the petitioner-landlord by leading cogent evidence. Arguments were addressed only on the point of the building having become unsafe and unfit for human habitation. Reference was made to the oral as also the documentary evidence led on the record of the case and it was submitted that the petitioner-landlord had duly been able to prove his case but the Courts below committed a manifest error by misreading the entire evidence. Pointed reference was made to the notices Ex.P-49 and P-51 issued by the Municipal Council, Hansi in which, the petitioner-landlord had been called upon to demolish the building as the same had become unsafe and unfit for human

habitation. Learned counsel submitted that both the Courts below lightly brushed aside the issue by stating that the notice had been issued to one Subhash and not to the present petitioner. **Learned counsel submitted that Subhash was none else than the real brother of the petitioner and in any case the notice was issued** with regard to the building and, therefore, to whom it was issued would not make a difference. Learned counsel further contended that the Courts below also erred in not relying upon the report of the expert examined by the petitioner in which it had categorically been stated that the entire building and the tenanted premises had outlived their life.

8. It was also submitted that some other tenants had also been evicted from the first-floor of the building on the ground of the building having become unsafe and unfit. The petitioner sought to produce these judgments by way of additional evidence but the same was not considered by the Appellate Authority and no findings were given on the application for additional evidence. Learned counsel contended that had the Appellate Court permitted the petitioner to lead additional evidence, the conclusion would definitely have been different.

9. On the other hand, learned counsel for the respondents submitted that the judgments passed by both the Courts below are based upon sound reasoning and do not call for any interference. Learned counsel submitted that respondent No.2-Yash Pal had expired and his LRs were not brought on record and, therefore, the judgments passed by the Courts below had become final *qua* him. Before this Court, the petitioner gave up respondent No.2 instead of bringing his legal representatives on record.

10. Learned counsel submitted that the tenanted premises had not become unsafe and unfit for human habitation. Reference was made to the report submitted by the expert examined by the petitioner as also by the expert examined

by the respondents. Learned counsel submitted that a bare perusal of the report would show that the tenanted premises had not become unsafe and unfit for human habitation. Referring to the notices Ex.P-49 and P-51, learned counsel submitted that the same were the result of a collusion as the same had neither been issued to the landlord nor to the tenant but had been issued to one Subhash Chander on the basis of an application alleged to have been moved by one Parveen Kumar, who had no concerned with the premises in dispute. Learned counsel also submitted that Subhash Chander, who was in fact the brother of the petitioner, remained a Minister of Local Bodies in the Haryana Government and, therefore, the notice was issued on his directions in collusion with the officials of the Municipal Council, Hansi.

11. With regard to the issue of a fatal accident having taken place and a person having died on account of electrocution, learned counsel submitted that the said person had expired on account of sparking in a welding set and not on account of accumulation of water. Learned counsel submitted no evidence was led to prove that the death had taken place on account of accumulation of water. Learned counsel submitted that even if, for the sake of arguments, it was admitted that the death had taken place on account of accumulation of water, it could not be said that the tenanted premises had become unsafe and unfit for human habitation.

12. Learned counsel also submitted that there was no evidence on record to show that the other tenant had vacated the premises on account of the building having become unsafe and unfit for human habitation. Learned counsel submitted that the other tenants may have compromised with the landlord but the same was not binding upon the respondents.

13. Winding up the arguments, learned counsel submitted that the tenanted premises was not an integral part of a big building. Reference was made

to the photographs Ex.P19 to Ex.P-24 and it was also submitted that the petitioner had himself demolished a portion of the building to create a ground of eviction and to defeat the rights of the tenant. In support of his contention learned counsel placed reliance upon judgment of Delhi High Court in **Hem Chand Vs. Hari Kishan Rohtagi, 1996(1) R.C.R.(Rent) 563**, judgment of Rajasthan High Court in **Om Parkash Vs. Smt. Chand Devi, 1973 R.C.R. (Rent) 562**, judgments of this High Court in **Shankar Lal Vs. Madan Lal and others, 2010(2) HLR 463**, **Mohan Lal Vs. Dr. Harbans Singh and others, 2008(2) HRR 249**, **Trilok Chand Vs. Smt.Dropati Devi and others, 1990(1) RCR 30**, **Daulat Ram Vs. Sadhu Ram and another, 1990(1) RCR 34**, **Mamam Chand Gupta Vs. Lakhpai Rai, 2000(2) RCR 38**, **Ram Avtar Vs. Murari Lal, 2000(1) RCR 565**, **Ashok Kumar and others by Lrs Vs. Gurcharan Singh and others of Amritsar, 1990 HRR 80** and judgment of Hon'ble Supreme Court in **Punjab Urban Planning and Development Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 (1) PLJ 643**.

14. I have given my thoughtful consideration to the arguments addressed by learned counsel for the parties.

15. Before advertng to the merits of the case, it needs to be mentioned that before the Appellate Authority, an application had been moved by the petitioner-landlord under Order 41 Rule 27 CPC for leading additional evidence. The petitioner-landlord wanted to produce on record two judgments dated 30.05.2012 passed in Rent Petitions No.32 of 2007 and 33 of 2007 wherein ejectment of the tenant had been ordered on the ground of the tenanted premises having become unsafe and unfit for human habitation. It was the case of the petitioner-landlord that these tenanted premises from which eviction had been ordered were a part of the same building in which the tenanted premises in the

present case is situated. The record shows that the said application was dated 28.08.2012. Reply to the same had also been filed which is also on record. The same is dated 06.11.2012. The Appellate Authority had stated in order dated 31.08.2012 about the filing of the said applications. As per the interlocutory orders, reply to the said application was filed on 18.12.2012, after which the matter remained pending for arguments on the application but thereafter the appeal was heard and dismissed on 31.01.2013 without deciding the application for additional evidence. Even in the judgment of the Appellate Authority, there is no reference to the application for additional evidence. It is, therefore, clear that the Appellate Authority did not take any decision on the said application.

16. The question before this Court would, therefore, be as to what course is to be taken. It has to be borne in mind that the present revision petition was filed as far as back as in 2013 and the same has been pending before this Court for the last 10 years. The primary ground on which eviction has been sought is that the building in which the tenanted premises is situated had become unsafe and unfit for human habitation. This Court can very well decide this petition on the basis of the evidence available on record. However, the judgments which were sought to be produced by way of additional evidence were judgments delivered by the Rent Controller wherein eviction of the tenants in those cases had been ordered on the same ground i.e., the building having become unsafe and unfit for human habitation. Those shops were said to be a part of the same building in which the present tenanted premises is situated.

17. In the considered opinion of this Court, it was imperative for the Appellate Authority to have decided the application for additional evidence. In the case of ***Joginder Pal Monga and another Vs. Jasjit Singh, 2020(2) PLR 265***, a Co-ordinate Bench was seized of a similar issue. The Co-ordinate Bench took the

view, while relying upon the judgment of the Hon'ble Apex Court in the case of ***Malayalam Plantations Ltd. Vs. State of Kerala, (2010) 13 SCC 487***, that the Appellate Authority should have decided the same before deciding the case on merits. This Court is in agreement with the said judgment of the Co-ordinate Bench because the decision on the application for additional evidence could have bearing on the merits of the case. The Appellate Authority, therefore, committed an error by not deciding the application for additional evidence.

18. In view of the aforementioned facts and circumstances, there is no option but to set aside the judgment dated 31.11.2013, passed by Appellate Authority, Hisar. The matter is remitted to the Appellate Authority with a direction to consider and decide the application for additional evidence referred to above and after the decision on the same, decide the appeal afresh. Considering the fact that the matter has been pending before this Court for the last 10 years, I deem it appropriate to fix a time-frame of six months in all for decision on the application for additional evidence as also, a fresh decision on the merits of the appeal after the decision in the application for additional evidence.

Pronounced on: 04.09.2023

Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.