Neta Ram

Vs

Jiwan Lal

Civil Appeal No. 646 of 1961.

(CJI S. K. Das, M. Hidayatullah, J. C. Shah JJ)

17.01.1962

JUDGMENT

HIDAYATULLAH, J. -

This is an appeal by special leave against an order of the High Court of Punjab at Chandigarh, dated April 7, 1961.

The appellants are five tenants, who have been evicted from certain shops and chobaras in the town of Patiala, on the application of the first respondent, the landlord. The application by the landlord was made in June, 1957, under s. 13 of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, 2006 BK (No. VIII of 2006 BK). The grounds urged by the landlord were (a) non-payment of rent by the tenants, (b) non-payment of house tax by the tenants and (c) that the shops were in a state of great disrepair and were dilapidated, and the landlord wished to rebuild them after dismantling the structures. The landlord averred that he had obtained sanction of the Municipal Committee to a proposed plan of construction, and accumulated some building material before making the application.

The tenants resisted the application. The Rent Controller framed issues relating to the three grounds; but the first two have ceased to be material now. On the issue relating to the third ground, the Rent Controller held that in deciding whether the tenants should be ordered to hand over possession to the landlord, the Courts must have regard to the bona fides of the request of the landlord, which meant that the desire to rebuild the premises should be honestly held by the landlord, but that the condition of the building also played an important part in determining whether the landlord had the intention genuinely and was not using this excuse as a device to get rid of the tenants. In this connection the Rent Controller observed that the state of the building, the means of the landlord, and the possibility of a better valid by way of rent, all entered into the appraisal of the landlord's state of mind. Examining the case from this angle, the Rent controller held that there was hardly any proof that the building was in a dilapidated condition. One solitary witness who testified to this, admitted that he had not seen the building from the inside. The landlord himself did not give evidence. On the other hand, there was ample evidence that the building was good. As regards the financial status of the landlord, the witnesses who stated on his behalf that he could spend Rs. 5,000 to Rs. 10,000 knew nothing about his means. Even the landlord's brother, who conducted this case on behalf of the landlord, could not give any details. The plan showed a building requiring about Rs. 20,000 to build. The landlord had an income of Rs. 200/- per month and his family consisted of his wife and five children. The Rent Controller, therefore, held that he had no means to rebuild the premises. The Rent Controller did not feel impressed by the alleged purchase of 40 bags of cement, because a greater part of the cement was used up already in building two or three latrines, and the quantity left

was wholly insufficient for the proposed building. He, therefore, decided the issue against the landlord.

On appeal, these findings were confirmed by the appellate authority, who held that the shops and chobaras were in good condition, and that the landlord was not, in good faith, wanting to replace the building, when he had no means to build it. Against the order of the appellate authority, an application for revision purporting to be under s. 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (3 of 1949), was filed in the High Court. This application was allowed. The learned single Judge posed the question thus :

> "The question in the present case is whether there is a bona fide desire to rebuild the premises ?".

He referred to an earlier decision of a Divisional Bench of that Court (Civil Revision No. 223 of 1960), in which Gosain, J., laid down the law in the following words :

> "It is pertinent to note that the word 'building' in the aforesaid clause is not qualified by the words 'requiring reconstruction' or 'requiring rebuilding'. The landlord can, in these circumstances, require and building for the re-erection of the same, and when in any case a claim to that effect is made by him the only point that has to be determined is whether on the facts and circumstances of that case his requirement is bond fide. A building, for instance, may not be immediately unsafe, but its condition may be such that unless it is reconstructed it may involve the landlord at a later date very heavy expenditure. All round a particular building different types of buildings may have been constructed of an entirely different design and the particular building in question may then be looking very ugly and the landlord may want to bring the same in conformity with the structures around it."

After quoting this passage, the learned Judge observed that the consideration which must weigh in determining the question of ejectment is whether the landlord genuinely wants to rebuild the premises, and further, that the actual condition of the premises is "a wholly irrelevant factor". In dealing with the merits of the case, the learned Judge referred to the officer of the landlord to put back the tenants in possession, if the premises were not demolished within a month of his obtaining possession thereof, and concluded, without discussing the evidence, as follows :

> "Upon the evidence on record it seems to me established beyond all doubt that the landlord genuinely and bona fide requires these premises for rebuilding."

He, therefore, set aside the concurrent orders of the two Tribunals, and ordered the eviction of the tenants, giving them two month's time in which to vacate the premises.

Two questions have been argued in this appeal. The first is that the revision application is incompetent, because under s. 16(4) of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, 'the decision of the appellate authority and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any court of law whether in a suit or other proceeding by way of appeal or revision". It is contended that s. 15(5) of the East Punjab Urban Rent Restriction Act, which conferred a power of revision on the High Court does not apply to the present case, because this case did not arise in proceedings taken under the Act. The next contention is that the interpretation placed by the learned Judge upon s.

13(3)(a)(iii) read with s. 13(3)(b) is erroneous, and that the High Court had no power to reverse a concurrent finding of fact without itself re-appraising the evidence, if at all.

On the first point, the learned counsel for the respondents relies upon a decision of this Court reported in Moti Ram v. Suraj Bhan [[1960] 2 S.C.R. 896], where it was held that a revision application in analogous circumstances was maintainable. In our opinion, even if a revision application lay, the learned single Judge was in error in his interpretation of the relevant sections of the Ordinance, and in reversing a concurrent finding of fact, without giving any substantial reasons.

Section 13 of the Ordinance, omitting portions which are irrelevant here, reads as follows :

> "13. (1) Notwithstanding anything contained in any other law for the time being in force, a tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Ordinance or otherwise and whether before or after the termination of the tenancy, except in accordance with the processions of this section.
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> # x x x##
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> (3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession.
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> # x x x##
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> (iii) in the case of any building, if he requires it for the re-erection of that building or for its replacement by another building, or for the erection of other building;
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> # x x x##
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> (b) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller, and if the Controller is not so satisfied, he shall make an order rejecting the application;
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> # x x x##
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> (4) where a landlord who has obtained possession of building or rented land in pursuance of an order under...........sub-paragraph (iii) of the aforesaid paragraph (a) put that building to any use of lets it out to any tenant other then the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly......"

Reading these provisions as a whole, it is obvious that if the landlord's need be genuine and he satisfies the Controller, he can obtain possession of the building or the land, as the case may be. If, however, he does not re-erect the building and puts it to any other use or lets it out to another tenant, the former tenant can apply to be put back in possession. Clause (b) clearly shows both affirmatively and negatively that the landlord must satisfy the Controller about his claim, before he can obtain an order in his favour. The Controller has to be satisfied about the genuineness of the claim. To reach this conclusion, obviously the Controller must be satisfied about the reality of the

claim made by the landlord, and this can only be established by looking at all the surrounding circumstances, such as the condition of the building, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord comes forward, and says that he entertains a particular intention, however strongly, said to be entertained by him. The clause speaks not of the bona fides of the landlord, but says, on the other hand, that the claim of the landlord that he requires the building for reconstruction and re-erection must be bona fide, that is to say, honest in the circumstances. It is impossible, therefore, to hold that the investigation by the Controller should be confined only to the existance of an intention to reconstruct, in the mind of the landlord. This intention must be honestly held in relating to the surrounding circumstances. In our opinion, the interpretation placed by the Punjab High Court (in the decision of Gosain, J.) puts too narrow a construction, and leaves very little for the Controller to decide. It is well-known that Rent Restriction Acts were passed in view of the shortage of houses and the High rents which were being demanded by landlords. The very purpose of the Rent Restriction Acts would be defeated, if the landlords were to come forward and to get tenants turned out, on the bare plea that they want to reconstruct the houses, without first establishing that the plea is bona fide with regard to all the circumstances, viz., that the houses need reconstruction or that they have the means to reconstruct them, etc. The two Tribunals below had gone into the matter thoroughly, and had agreed that the landlord had neither the means to reconstruct the building nor had he made any attempt to face cross-examination as a party. They were also of the opinion that the building was in a good state and did not need to be pulled down or reconstructed. With such clear findings, one would expect that a revising Court, however, vide its powers may be, would, at least, go into the question over again, if it was going to depart from this unanimous conclusion. It is hardly necessary to go into the question of the extent of the powers of the High Court under s. 15(5) of the Rent Restriction Act. They have been adverted to in the ruling of this Court, above mentioned. They do not, however, include the power to reverse concurrent findings, without showing how those findings are erroneous. In the present case, the learned Judge has given his conclusion without adverting to single piece of evidence, from which his conclusion was drawn. In these circumstances it cannot be said that he had examined the propriety of the order sought to be revised, even under the provisions of the law he was administering.

Learned counsel relying upon the case to which we have already referred, said that there the sanction by the Municipal committee was taken into consideration in deciding the need of the landlord. The facts in that case are not fully stated, and from the observations, it would appear that there was other evidence besides the sanction by the Municipal committee, on which the conclusion of the High Court was supported. In any event, a case cannot be an authority on a point of fact, and each case will have to be examined in the light of the circumstances existing in it. In the present case, the two Tribunals specially appointed to consider these matters, went thoroughly into the question, and discussed it from a correct angle. It they had examined the facts after instructing themselves correctly about the law, a Court of revision should be slow to interfere with the decision thus reached, unless it demonstrates by its own decision, the impropriety of the order, which it seeks to revise. No attempt of this kind has been made in this case, and in our opinion, the High Court was not justified in reversing the clear finding.

In the result, this appeal must be allowed. The order of the High Court is set aside, and that of the appellate authority is restored. The landlord shall pay the costs here and in the High Court.

Appeal allowed.

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