

Om Prakash

Vs

Amar Singh and Others

Civil Appeal No. 886 of 1976

(Sabyasachi Mukharji, K. N. Singh JJ)

09.01.1987

JUDGMENT

SINGH, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Allahabad setting aside the judgment and decree of the first appellate court and decreeing the landlord's suit for eviction against the appellant.

2. The appellant has been tenant of Kothi No. 196 situated in Dholki Mohalla, Sadar Bazar, Meerut Cantt. ever since 1961 on a rent of Rs. 93 per mensem. The tenanted premises was let out to the appellant for running a Dal and Oil Mill. The respondents purchased the building from the erstwhile owners in 1963. A year later, they filed a suit for appellant's eviction on a number of grounds including the ground that the appellant had made constructions materially altering the accommodation without their consent causing substantial damages to it. It is not necessary to refer to other grounds as the sole ground which survived for the decree of eviction relates to the material alterations made in the tenanted premises without obtaining the consent of the landlord. The disputed constructions include a partition wall in a hall converting the same into two portions and tin sheds shown by letters ABHG and CDGH. The trial court held that the partition wall in the hall did not constitute material alteration, it further held that the tin shed marked by letters ABHG had been constructed by the appellant with the consent of the erstwhile landlord's predecessor in interest of the respondents but the tin shed marked with letters CDGH had been constructed by the appellant subsequently without respondent's consent, which materially altered the accommodation and on that finding the trial court decreed the suit. On appeal, the Additional Civil Judge set aside the trial court's order and dismissed the respondents' suit on the findings that none of the constructions constituted material alteration justifying appellant's eviction under Section 14(c) of the U.P. Cantonment Rent Control Act, 10 of 1952. On a second appeal made by the respondent a learned Single Judge of the High Court set aside the order of the first appellate court on the findings that the tin shed indicated by the letters CDGH as well as the partition wall made in the hall converting the same into two rooms, constituted material alteration as contemplated by the Section 14(c). Since the constructions had been made without permission of the respondents, the tenant was liable for eviction.

3. There is no dispute that the demised premises is subject to the provisions of the U.P. Cantonment Rent control Act, 1952 (hereinafter referred to as the Act). Section 14 of the Act imposes restriction on the landlords' right to the file suit for eviction of a tenant from any accommodation except on one or more of the grounds specified therein. Section 14(c) relevant for the purposes of this case reads as under :

14. Restrictions on eviction.- No suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following ground, namely :

(c) that the tenant has, without the permission of the landlord, made or permitted to be made any such construction as in the opinion of the court has materially altered the accommodation or is likely substantially to diminish its value;

4. The Act does not permit a landlord to file suit for eviction of a tenant without obtaining permission of the District Magistrate but if the tenant, without the landlords; permission made or permitted to make construction which in the opinion of the court has materially altered the accommodation or which is likely to diminish its value substantially, the landlord is free to file suit for tenant's eviction without obtaining permission of the District Magistrate. If the tenant makes constructions which materially alter the accommodation, without the permission of the landlord the embargo placed on the landlords' right to file suit is lifted and he is free to file suit for tenant's eviction without obtaining permission of the District Magistrate. It is the unauthorized constructions which provides cause of action for tenant's eviction, but every construction or alteration made by a tenant in the building does not provide a ground for eviction; instead the constructions complained of, must be of such nature and character as to materially alter the accommodation. Necessary facts which should be established by the landlord for obtaining a decree against the tenant under the said provision are that (i) the tenant has made constructions; (ii) such constructions have been made without the consent of the landlord; and (iii) constructions so made have materially altered the accommodation. These three conditions are cumulative in nature, each one of them is necessary to be established before a decree for eviction can be passed against the tenant. So far as the first and second conditions are concerned, they do not present any difficulty as these are pure questions of fact, but difficulty arises in determining the third condition, namely whether the constructions constitute material alteration. It is vexed question which the courts face very often.

5. The Act does not define either the word 'materially' or the word 'altered'. In the absence of any legislative definition of the aforesaid words it would be useful to refer to the meaning given to these words in dictionaries. Concise Oxford Dictionary defines the word 'alter' as change in character, position. "Materially" as an adverb means 'important' essentially concerned with matter not with form. In Words and Phrases (Permanent Edition) one of the meanings of the word 'alter' is "to make change, to modify, to change, change of a thing from one form and set to another. The expression "alteration" with reference to building means 'substantial' change, varying change the form or the nature of the building without destroying its identity". The meaning given to these two words show that the expression 'materially altered' means "a substantial change in the character form and the structure of the building without destroying its identity". It means that the nature and character of change or alteration of the building must be of essential and important nature. In Babu Monmohan Das Shah v. Bishum Das ((1967)1 SCR 836 : AIR 1967 SC 643), this Court considering the expression 'material alterations' occurring in Section 3(1)(c) of U.P. (Temporary) Control of Rent and Eviction Act, 1947 observed :

Without attempting to lay down any general definition as to what material alterations mean, as such a question would depend on the facts and circumstances of each case, the alterations in the present case must mean material alterations as the construction carried out by the respondent had the effect of altering the form and structure of the accommodation.

6. In determining the question the court must address itself to the nature, character of the constructions and the extent to which they make changes in the front and structure of the accommodation, having regard to the purpose for which the accommodation may have been let out to the tenant. The legislature intended that only those constructions which bring about substantial change in the front and structure of the building should provide a ground for tenants' eviction, it took care to use the word "materially altered the accommodation". The material alterations contemplate change of substantial nature affecting the form and character of the building. Many a time tenants make minor constructions and alterations for the convenient use of the tenanted accommodation. The legislature does not provide for their eviction instead the construction so made would furnish ground for eviction only when they bring about substantial change in the front and structure of the building. Construction of a Chabutra, almirah, opening a window or closing a verandah by temporary structure or replacing of a damaged roof which may be leaking or placing partition in a room or making similar minor alterations for the convenient use of the accommodation do not materially alter the building as in spite of such constructions the front and structure of the building may remain unaffected. The essential element which needs consideration is as to whether the constructions are substantial in nature and they alter the form, front and structure of the accommodation. It is not possible to give exhaustive list of constructions which do not constitute material alterations, as the determination of this question depends on the facts of each case. In *S. B. Mathur v. K. P. Gupta* (1961 All LJ 137) construction of temporary wall enclosing verandah and putting up an iron jungala and placing a partition wall, temporary in nature was held not to constitute material alteration of the accommodation. In *Dr. J. G. Gupta v. Bodh Mal* (1969 All LJ 477) a Division Bench of the High Court held that temporary construction made by a tenant in the shape of kitchen and bathroom did not constitute material alterations as the same were temporary and they could be removed without causing any damage to the accommodation. In *Sita Ram Sharan v. Johri Mal* (1972 All LJ 301) a Full Bench held that construction which converted the tenanted premises into double storey structure, materially altered the accommodation. Another Division Bench of the High Court in *Baldev Das v. Ram Khelawan* (1979 All LR 44) held that a partition wall in a ship converting the same into two portions for the convenient use of the same did not amount to material alteration. These decisions were rendered on the facts available on the record of those cases. In deciding this question the court has to consider whether the constructions have been made with the consent of the landlord and if so, whether those constructions are of such substantial nature which make material alterations in the accommodation. The findings of the court regarding constructions would be findings of fact, but the question whether the constructions materially alter the accommodation is a mixed question of fact and law, which should be determined on the application of the correct principles.

7. In the instant case the disputed constructions which the High Court has found to be 'material alteration' consists of a partition wall of 6 feet height in a hall converting the same into two rooms and a tin shed marked by letters CDGH on the eastern side on an open land adjacent to the accommodation. The trial court held that the partition wall did not change the front or structure of the accommodation, it being temporary in nature, did not constitute material alterations in the accommodation. This finding of the trial court was not challenged by the landlord before the Civil Judge. But the High Court has held that the partition wall constituted 'material alteration'. The findings recorded by the trial court and the relevant evidence placed before us by the parties clearly show that the partition wall did not actually partition the hall converting the same permanently into two rooms. The partition wall was made without digging any foundation of the floor of the room nor it touched the ceiling, instead; it was a temporary wall of 6 feet height converting the big hall into two portions for its convenient use, it could be removed at any time without causing any

damage to the building. The partition wall did not make any structural change of substantial character either in the form or structure of the accommodation.

8. The other disputed item relates to the construction of tin shed. The respondent alleged that the appellant had constructed a tin shed shown by letters ABCD in the site plan attached to the plaint in an unauthorised manner without obtaining his consent. All the three courts have recorded concurrent finding that the tin shed shown by the letters ABCD consists of two portions. One portion is shown by letters AGHB and the other shown by GHCD. The trial court as well as the first appellate court both have recorded findings that the portion of the tin shed shown by letters CDGH had been constructed by the appellant without the consent of the respondent landlords, but the rest of the tin shed shown by the letters ABGH had been constructed by the appellant after obtaining permission of the Cantonment Board and the erstwhile landlord. The First Appeal Court held that the tin shed shown by letters CDGH did not constitute material alteration as the constructions were temporary in nature which could be removed at any time without causing any damage to the accommodation. The first appeal court further held that the basic structure of the accommodation let out to the appellant was not affected at all by the disputed tin shed as it had been constructed on the open land adjoining the accommodation and it was enclosed by bamboo structure, and Kuchha wall which did not effect any change in the form or the structure of the tenanted building. In second appeal the High Court held that since two sides of the tin shed were resting on the pacca wall it constituted a material alteration in the accommodation. We have been taken through the commissioner's report filed before the lower court and on perusal of the same we find that the wall which had been constructed for the tin shed was Kuchha, made of bricks and mud and the bamboo tatters were used for enclosing it. The findings recorded by the first appeal court and the Commissioner's report make it evident that the tin shed was constructed on an open land, it was temporary in nature and it could be removed without causing any damage to the building. One portion of the tin shed was already in existence on the open land adjacent to the accommodation, the appellant merely extended that tin shed which did not make any substantial change either in the form or structure of the building. There is no material on record to sustain the findings of the High Court that the appellant had constructed pacca walls on three sides of the tin shed; instead the Commissioner's report is contrary to it. In the circumstances the construction of tin shed could not be held to have materially altered the accommodation.

9. Learned counsel for the respondent placed reliance on the Full Bench decision of the High Court in Sita Ram case (1972 All LJ 301) where the question as to what constructions could materially alter the accommodation was considered. The Full Bench held that conversion of a single storey shop into a double storied structure by constructing a pacca superstructure on the roof of the shop materially altered the accommodation. On the facts of that case, there could be no doubt that the tenant had made substantial constructions which changed the form, front and structure of the tenanted shop. The High Court observed that the fact that a construction is permanent or temporary in nature does not affect the question as to whether the constructions materially alter the accommodation or not. We do not agree with this view. The nature of constructions, whether they are permanent or temporary, is a relevant consideration in determining the question of 'material alteration'. A permanent construction tends to make changes in the accommodation on a permanent basis, while a temporary construction is on temporary basis which do not ordinarily affect the form or structure of the building, as it can easily be removed without causing any damage to the building. The Full Bench referred to the observation of this Court made in Babu Manmohan Das Shah case ((1967) 1 SCR 836 : AIR 1967 SC 643) that the alteration in a given case might not cause damage to the premises or its value or might not amount to an unreasonable use of leased premises, yet construction may fall within the expression 'material alterations'. In our opinion the observations made in Babu Manmohan Das Shah case ((1967) 1 SCR 836 : AIR 1967 SC 643) do not justify

inference that the nature of the construction whether permanent or temporary is not relevant for the purpose of determining the 'material alterations' made by a tenant.

10. Learned counsel then urged that this Court should not interfere with the findings of fact recorded by the High Court. We find no merit in the submission. The question whether disputed constructions constitute material alterations is a mixed question of fact and law. The High Court in second appeal interfered with the findings of fact recorded by the lower courts on the question whether tin shed and the partition wall constituted material alterations. The learned Single Judge placing reliance on the observations of the Full Bench decision in Sita Ram case (1972 All LJ 301) held that the disputed construction even though temporary in nature, which could be removed without causing any damage to the accommodation, would fall within the mischief of material alterations. The High Court committed error in interfering with the findings of the first appeal court. We accordingly allow the appeal, set aside the order of the High Court and restore the judgment and decree of the first appeal court. In the circumstances of the case there would be no order as to costs.

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