Shadi Singh

Vs

Rakha

Civil Appeal No. 2945 of 1980

(N. M. Kasliwal, K. Ramaswamy JJ)

23.04.1992

JUDGMENT

K. RAMASWAMY, J. -

1. The respondent, landlord, laid the application under Section 13(3)(a)(iii) of the East Punjab Urban Rent Restriction Act, 1949, for short 'the Act' for ejectment of the appellant from the demised premises alleging that the building required for reconstruction, since it became unsafe and unfit for human habitation. The Rent Controller by his order dated March 5, 1973 directed eviction of the appellant. On appeal, the District Court (appellate authority) by judgment dated May 7, 1975 reversed it and held that as the appellant had already carried out repairs the shop became safe and habitable and so the need for ejectment no longer subsists. The eviction petition was dismissed. The High Court of Punjab and Haryana by its judgment dated September 19, 1980 in Civil Revision No. 985 of 1975 allowed the revision and restored the order of the Rent Controller. Thus this appeal by special leave under Article 136 o the Constitution of India.

2. In the petition, the respondent pleaded that the demised premised is a shop and most of the roof had already fallen and the remaining part may fall at any time; the flooring has given way and the walls were crumbling. Therefore, the premises required reconstruction. The appellate authority, as final court of fact, appreciated the evidence and held that the report of the Nazir Richpal Singh shows that out of five, two khanas (columns) of the roof had fallen down and that three require replacement of few batons. He also found that no potion of the wall had fallen down and that the appellant did not repair by any addition to the roof. The appellant had carried out replacement of that part of the roof which had fallen down and no more. It amounts to minor repairs and not reconstruction of the shop or structural alteration thereof. It pointed out that Section 12 of the Act, gives right to a tenant to seek permission of the Controller to effect ordinary repairs but he has no right to effect reconstruction of structural alteration of the building. The repairs effected by the appellant were not extensive. The High Court accepted these findings. Nonetheless it took the view that the tenant, without taking recourse to Section 12, cannot replace the fallen roof. The cause of action arose under Section 13(3)(a)(iii) cannot be defeated by unilateral action of the appellant. After the back portion of the roof of the shop had fallen it had become unfit for human habitation. In that view the appellant was held liable to be evicted. Accordingly allowed the revision.

3. The question is whether the High Court is right in law in reversing the judgment of the appellate authority. Section 13 of Act gives right to the landlord to seek eviction of a tenant. Clause (a)(iii) of sub-section (3) reads thus :

> "In the case of any building or rented land, if he requires it to carry out any building

> work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation."

Sub-section (4) further obligates on effecting reconstruction or repairs that "where a landlord who has obtained possession of a building or rented land in pursuance of an order ... under sub-paragraph (iii) of paragraph (a), puts that building to any use or lets it to any tenant other than 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". Section 12 gives right to a tenant to effect necessary repairs, thus :

> "If a landlord fails to make the necessary repairs to a building other than structural alterations, it shall be competent for the Controller to direct on application by the tenant, and after such inquiry as the Controller may think necessary, that such repairs may be made by the tenant, and that the cost thereof may be deducted from the rent which is payable by him".

The scheme of the Act in this behalf adurmberates that it is the obligation of the landlord to keep the building in fit and habitable condition. If he fails to make the necessary repairs to the building other than reconstruction or structural alteration, the tenant has been given a right under Section 12 to make an application to the Rent Controller, who after making such enquiry as he may think necessary, is empowered and shall be competent to pass an order directing the tenant to effect necessary repairs. The costs expended thereof may be deducted from the rent payable to the landlord. The landlord, equally, is entitled under Section 13(3)(a)(iii) to seek eviction of the tenant from any building if the landlord requires it to carry out building work pursuant to the notice issued by the Government, local authorities or Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation. On reconstruction or effecting repairs by the landlord, he is enjoined to restitute the evicted tenant into possession of the building. Under sub-section (4) of Section 13 it shall be mandatory for the Rent Controller to make an order in that behalf, despite the landlord himself makes use of the building or lets it out to any other tenant and puts a new tenant in possession of the evicted building.

4. Shri Goel, learned counsel for the appellant with thorough preparation and neat presentation of the case, argued that on the date of filing an application for eviction the building was unsafe and unfit for human habitation due to fall of roof from two khanas. By subsequent replacement of them by the appellant, the requirement of the building to effect the repairs no longer subsisted. Thus subsequent event was rightly taken note of by the appellate authority and the High Court took narrow view of the matter and wrongly reversed the judgment of the appellate authority. We find force in the contention. The High Court having accepted the finding of the appellate authority that the tenant effected repairs by replacing the fallen roof and made it safe and fit for habitation, the requirement of the building for the same purpose no longer sub-sisted. Whether the repairs effected by the tenant at its own cost without taking recourse to Section 12, would alter the situation ? Our answer is no. It is settled law that all the provisions should harmoniously be read together to give effect to them and should not be rendered otiose or surplusage. It is difficult to give acceptance to the contention of Sri Harbans Lal, learned senior counsel for the respondent, that the verb 'requires' in Section 13(3)(a)(iii) would be applicable to the first part, namely to carry out any building work. It also would encompass of the building which became unsafe or unfit for human habitation. The requirement of the building would be both to carry out building work as per the developmental scheme of the named authorities or when the building needs repairs or reconstruction when the

existing one became unfit and unsafe for human habitation. Otherwise there is no power to the Controller to order eviction though the building became unsafe and unfit for human habitation. The word 'requires' cannot be read in isolation, but in conjunction with sub-section (4) of Section 13. Sub-section (4) which enjoins the landlord, after effecting repairs or reconstruction or structural alteration and making it safe and fit for human habitation, to restitute the same to his erstwhile tenant. If he commits breach thereof, the Controller has been invested with the power to pass an order in that behalf. The acceptance of the respondent's contention that the requirement of the building would be only for reconstruction or structural alteration but it would not apply when the building became unsafe or unfit for human habitation, operates as an escape route to enforce compliance with sub-section (4) of Section 13 rendering the later clause otiose and the tenant though was evicted on that ground remains remediless. Such a construction is impermissible.

5. In Maharaj Jagat Bahadur Singh v. Badri Prasad Seth (1962 Supp (3) SCR 952 : 1963 Punj LR 452), the respondent was running a cinema theatre known as Rivoli. The Municipal Commissioner Shimla noted some defects and directed the appellant to remove the defects in the theatre. The appellant sought for eviction of the respondent tenant on the ground that the building became unsafe and unfit for habitation. The Rent Controller directed eviction. The District Judge, on appeal, came to the conclusion that the appellant manipulated the notice to have the tenant evicted. The repairs could be effected without ejecting the tenant. On revision, the High Court confirmed it. This court on further appeal held that Section 13(3)(a)(iii) of the Act attracted only when the building work is such the landlord requires that the building be vacated by the tenant in order to carry out the work. In other words, the repairs needed are so extensive and fundamental in character that they cannot be carried out if the tenant remains in possession. Then only it can be said that the landlord requires the building to carry out the building work. On the facts in that case it was held that repairs to be effected did not require eviction of the tenant. In Piara Lal v. Kewal Krishan Chopra ((1988) 3 SCC 51), the facts found were that out of the rooms only the roof of one room in the rear side had fallen down and needed replacement. An application under Section 12 of the Act was filed and the order by the Rent Controller in that behalf was obtained. On those grounds the question arose whether Section 13(3)(a)(iii) of the Act would get attracted. This court held thus :

> "It is true that a roof of one of the rooms on the rear side had fallen down and required replacement but there was no evidence whatever that the entire building or a substantial portion of it was in a damaged condition and consequently the building as a whole had become unfit and unsafe for human habitation. Unless the evidence warranted an interference that the falling down of the roof in one room was fully indicative of the damaged and weak condition of the entire building and that the collapse of the roof was not a localised event, we fail to see how the High Court could have concluded that the entire building had become unsafe and unfit for human habitation. In fact, the appellant had replaced the roof only at a cost of about Rs. 200 and this would independently show that the damage that had occurred could not have been of a serious or disquieting nature."

It is true as contended by Shri Harbans Lal that in that case there were five rooms and the roof of one room alone had fallen and that the tenant had obtained orders of the Rent Controller under Section 12, and thereafter the tenant replaced the roof. It is sought to be contended that by unilateral act of the tenant effecting repairs, the right of the landlord for eviction under Section 13(3)(a)(iii) was frustrated and it could not be permitted to be done. Normally it would be so. A tenant is under a statutory obligation to approach the Controller and seek an order for effecting repairs provided the landlord refuses or neglects to effect repairs. After the Rent Controller passes an order, the tenant

acquires right to effect repairs. In that event he is entitled to recover costs thereof from the rent payable. Under Section 108(f) of the Transfer of Property Act, even in the absence of a contract tenant has a unilateral right to effect repairs, when the landlord neglects to effect repairs within a reasonable time. After notice the tenant has a right to effect the repairs and deduct the expenses with interest from the rent or otherwise recover it from the landlord. Under the Act this right is hedged with an obligation to get an order from the Rent Controller.

6. There is a distinction between effecting repairs and in its guise to make structural alteration or to restructure the building. The tenant cannot effect structural alteration or reconstruct the building. It is the right of the landlord alone to exclusively have it done, unless of course, the landlord having had the tenant evicted from the building for that purpose and demolished the building failed to reconstruct and redeliver possession thereof to the tenant. In a given case if the tenant acts unilaterally and effects structural alterations or reconstruct the building, it itself may be a ground for eviction under the appropriate provision of the statute. No such allegation was made, nor an amendment to the pleading sought by the respondent in this behalf. A feeble attempt was made by Shri Harbans Lal to raise the contention. In the absence of the pleading and the contentions raised in the courts below, we decline to permit the counsel to argue that point, since there is no factual foundation in that behalf. The test in each case is whether it is absolutely necessary to have the tenant evicted to carry out repairs or structural alteration for making the demised building safe and fit for human habitation. Further it is to be asked whether the repairs are so fundamental in character and extensive which cannot be carried out without evicting the tenant from the building or while the tenant remained in occupation. If the repairs could be carried out without disturbing the possession of the tenant, the need for eviction is a mere wish of the landlord or a ruse to have the tenant evicted. Take for instance, a building, in which commercial activity having established goodwill, was taken possession of under Section 13(3)(a)(iii) and got no repairs effected but demolished and no reconstruction was made for a long time. Prolonged stoppage of business will have a deleterious effect on the goodwill and cripple business of the tenant. Each case on its own facts present its true colours. Its effect is to be visualised and considered in its own perspective.

7. It is settled law that subsequent events can be taken note of and the relief would be moulded suitably, vide Hasmat Rai v. Raghunath Prasad ((1981) 3 SCC 103 : (1981) 3 SCR 605) and Variety Emporium v. V. R. M. Mohd. Ibrahim Naina ((1985) 1 SCC 251. 259 : (1985) 2 SCR 102, 110). Therefore, the appellate authority (District Court) is well justified in its conclusion that the cause of action for eviction of the appellant no longer subsisted after the tenant effected repairs and replaced that part of the fallen roof and the order of eviction, thereafter became unnecessary and wrong.

8. The appeal is accordingly allowed. The judgment of the High Court is set aside and that of the appellate authority is restored. Consequently eviction petition stands dismissed. But in the circumstances parties are directed to bear their own costs.

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