IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 230/2018
Reserved on: 19.7.2019
Date of decision: 22.7.2019

Bhupinder Singh Negi .....Petitioner

Versus

Naresh Joshi .....Respondent

Coram
The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting ?[1] *Yes*

For the petitioner: Mr. Y. P. Sood, Advocate.

For the respondent: Mr. Sunil Chauhan, Advocate.

Tarlok Singh Chauhan, Judge

The tenant is the petitioner, who, after having lost before both the learned authorities below, has field the instant petition.

The parties shall be referred to as the "landlord" and "tenant".

2 The landlord filed a rent petition under Section 14 of the H.P. Urban Rent Control Act, 1987 (for short, the "Rent Act") before the learned Rent Controller seeking eviction of the tenant on the ground that he had ceased to occupy the demised premises, i.e. set No. 1, Second Floor, Sidh Niwas, Sanjauli, Shimla-6 without any reasonable and probable cause after his transfer from

[1] *Whether reporters of Local Papers may be allowed to see the Judgment ?Yes*

Government Primary School Beolia, Shimla to Government Primary School, Naini, Tehsil Rampur. The eviction was further sought on the ground of arrears of rent.

3 The tenant contested the petition and denied that he had ceased to occupy the demised premises and in fact was temporarily out of Shimla in connection with his service, whereas his family was still residing in the demised premises. The claim of arrears of rent was also denied.

4 The learned Rent Controller after framing the issues and recording the evidence of the parties, allowed the petition vide order dated 16.11.2017 on the ground of ceased to occupy the demised premises for a continuous period of 12 months prior to the date of filing of the eviction petition, however, it dismissed the same on the ground of arrears of rent. The appeal filed by the tenant before the learned appellate authority came to be dismissed vide judgment dated 30.8.2018 constraining him to file the instant petition.

5 It is vehemently argued by Mr. Y.P. Sood, Advocate, for the tenant that the findings recorded by both the learned authorities below are perverse and, therefore, deserve to be set aside. He would further urge that mere non-occupation of the demised premises for some time, that too on account of job

compulsion, could not have been held to be amounting to cease to occupy the demised premises and such findings, therefore, are not only erroneous, but perverse and deserve to be set aside. On the other hand, Mr. Sunil Chauhan, Advocate, for landlord, would argue that the findings recorded by both the learned authorities below are based upon the pleadings and correct appreciation of the evidence and cannot be termed to be perverse so as to call for interference of this Court, especially in exercise of its revisional jurisdiction.

6 At the outset, it would be noticed that the scope of revisional jurisdiction which this Court can exercise must borne in mind, as the Constitution Bench of the Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh (2014) 9 SCC 78*** laid down certain broad principles for exercise of revisional jurisdiction, which can be summarized as under:

(i) *The term 'propriety' would imply something which is legal and proper.*

(ii) The power of the High Court even though wider than the one provided under Section 115 of the Code of Civil Procedure is not wide enough to that of the appellate Authority.

(iii) Such power cannot be exercised as the cloak of an appeal in disguise.

(iv) Issues raised in the original proceedings cannot be permitted to be reheard as a appellate Authority.

(v) *The expression "revision" is meant to convey the idea of much narrower expression than the one expressed by the expression "appeal". The revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the CPC but certainly it is not wide enough to make the High Court a second court of first appeal. While holding so the Court reiterated the view taken in Dattonpant Gopalvarao Devakate vs. Vithalrao Maruthirao Janagawal, (1975) 2 SCC 246.*

(vi). *The meaning of the expression "legality and propriety" so explained in Ram Dass vs. Ishwar Chander, (1988) 3 SCC 131 was only to the extent that exercise of the power is not confined to jurisdictional error alone and has to be "according to law".*

(vii) *Whether or not the finding of fact is according to law or not is required to be seen on the touch stone, as to whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence; overlooking; ignoring the material evidence all together; suffers from perversity; illegality; or such finding has resulted into gross miscarriage of justice. Court clarified that the ratio of Ram Dass (supra) does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a finding contrary to the findings returned by the authority below.*

(viii) *In exercise of its revisional jurisdiction High Court shall not reverse findings of fact merely because on*

reappreciation of the evidence it may have a different view thereupon.

(ix) The exercise of such power to examine record and facts must be understood in the context of the purpose that such findings are based on firm legal basis and not on a wrong premise of law.

(x) Pure findings of fact are not to be interfered with. Reconsideration of all questions of fact is impermissible as Court cannot function as a Court of appeal.

(xi) Even while considering the propriety and legality, high Court cannot reappreciate the evidence only for the purposes of arriving at a different conclusion. Consideration of the evidence is confined only to adjudge the legality, regularity and propriety of the order.

(xii) Incorrect finding of fact must be understood in the context of such findings being perverse, based on no evidence; and misreading of evidence."

7 In the aforesaid decision, the Hon'ble Supreme Court was dealing with the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965, T. N. Buildings (Lease and Rent Control) Act, 1960 and Haryana Urban (Control of Rent and Eviction) Act, 1973. The incongruity in the decisions rendered by the Hon'ble Supreme Court in ***Rukmini Amma Saradamma vs. Kallyani Sulochana, (1993) 1 SCC 499 and Ram Dass (supra)*** was the backdrop in which the Constitution Bench was called upon to

decide the scope of the revisional jurisdiction and the expression "legality and propriety" provided in the relevant statues. The essential question being as to whether in exercise of such powers, the revisional authority could re-appreciate the evidence or not. Finally the Hon'ble Supreme Court answered the reference by making the following observations:-

> *"43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness,*

legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers."

8 The only subsisting ground for eviction of the tenant, as raised by the landlord, is that tenant has ceased to occupy the demised premises as per Section 14(2)(v) of the Act, which reads as under:-

14. Eviction of tenants.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(v) that the tenant has ceased to occupy the building or rented land for a continuous period of twelve months without reasonable cause.

9 It is more than settled that the initial burden to show that the tenant has ceased to occupy the building continuously for 12 months is always on the landlord. He has to adduce tangible evidence to prove the fact that as on the date of filing the petition, the tenant was not occupying the building continuously for 12

months. Once such evidence is adduced, the burden shifts on the tenant to prove that there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of 12 months.

10 The word used in the statute is "reasonable cause. However, no strait-jacket formula can be evolved for determining as to what is the reasonable cause and each case is required to be decided keeping in view the nature of the lease, the purpose for which the premises are let out and the evidence of the parties. If the tenant does not use the building for the purpose for which it is let out, he cannot be said to be occupying the building merely because he has put some furniture or articles or machinery under his lock and key. ***(See: Dunlop India Ltd. vs. A.A. Rahna and anr., 2011(5) SCC 778).***

11 Bearing in mind the aforesaid exposition of law, it would be noticed that the landlord in his eviction petition has raised specific plea regarding the tenant having ceased to occupy the demised premises, as is evident from para 18(a)(1) of the petition, which reads as under:-

> *"That the respondent has ceased to occupy the aforesaid premises w.e.f. December 2009, which is locked since then. The respondent who is working as teacher in the Education Department, Himachal Pradesh was transferred from Shimla*

to Govt. School Naini, Tehsil Rampur, Distt. Shimla,H.P. in December 2009,where he immediately joined and is living there along with his family since then. The respondent had permanently shifted from Shimla to Rampur and never came back and paid the rent into the account of the petitioner. The premises has not been used for the purpose it is meant and the respondent has no intention to occupy the premises. He has ceased to occupy the tenanted premises for more than one year continuously i.e. clear twelve months immediately preceding the filing of the petition and is liable to be evicted from the premises on this ground."

12 In order to substantiate the plea taken in the eviction petition, the landlord herself stepped into the witness box as PW1 and reaffirmed and res-asserted the facts of the petition.

13 In addition thereto, she also examined PW2 Vinayak Sood, who stated that the tenant was not residing in the demised premises as he had shifted to Rampur and locked the demised premises.

14 PW3, Rajesh Kumar, Clerk, Electricity Sub Division, Sanjauli, proved on record the electricity consumption from December 2009 to December 2012 vide Ext. PW3/A, which showed the electricity consumption to be only 120 KW during that period.

15 PW4, Ravinder Sharma, Superintendent, Director, Elementary Education, Shimla, proved on record transfer order of the tenant.

16 Thus, on the basis of the aforesaid evidence, it can be held that the landlord has discharged the initial onus regarding the tenant having ceased to occupy the demised premises and now, it is for the tenant to establish to the contrary.

17 The tenant tendered in evidence his affidavit, Ext.RW1/A,wherein he reaffirmed and re-asserted the facts of the reply to the petition and prayed for dismissal of the petition. In cross-examination, he admitted that he was working in Education Department as Teacher since 9.12.2002. He further stated that in December 2009, he was transferred from Government Primary School, Beolia, Shimla to Government Primary School, Naini, Tehsil Rampur,where he joined in December, 2009 and was residing there. He further stated that he stayed there till August 2011, but voluntarily stated that his family was all throughout residing in Shimla. He admitted that from December 2009 till March, 2013, he stayed out of Shimla. He admitted that ration card after 2009 was prepared from his ancestral village.

18 RW2, Joginder Singh, tendered in evidence his affidavit, Ext.RW2/A, in which he stated that the tenant was residing in the demised premises. He further stated that son of the tenant had been working with husband of the landlord on Photostat machine at Summerhill, Shimla and was getting salary of

Rs. 2500/- per month. He stated that he was working as Foreman in Fire Brigade since 2012 and used to visit the demised premises even after transfer of the tenant,where his son and wife were residing. In cross-examination, he admitted that he had been working in Shimla since 2012 and did not remember where the tenant was posted in the year 2009. He stated that tenant was transferred to Rampur in the year 2009. He denied the suggestion that the wife of the tenant was residing in the village. However, he admitted that the tenant stayed at Rampur from December 2009 to December 2013.

19 RW3, Dinesh Negi, son of the tenant, tendered in evidence his affidavit, Ext. RW3/A, in which he stated that he along with his parents was residing in the demised premises since 2004. He further stated that when his father was transferred to Rampur, he along with his mother was residing in the demised premises. He also stated that in the year 2011, he had worked with husband of the landlord on Photostat machine at Summerhill for about 7-8 months. He also stated that from the date when his father was transferred till date, he along with his mother had been residing in the demised premises. In cross-examination, he admitted that his father had been transferred from Shimla to

Rampur. He denied the suggestion that he and his mother after transfer of his father never resided in the demised premises.

20 It would be noticed that the specific case of the tenant is that even after having transferred from Shimla to Rampur, his wife and son were residing in the demised premises and his son had worked with husband of the landlord at Summerhill in the year 2011 for about 7-8 months. The tenant has not disputed the fact that he stood transferred from Shimla to Rampur in December 2009 and stayed there till December 2013.

21 In case the family of the tenant be it his wife or his son, had been residing in the demised premises, then obviously there would be regular consumption of the electricity and not merely 120 KW from December 2009 to December 2012. This is practically not possible because if a family consisting of two persons is residing in a place like Shimla, where there are severe winters and mild summers, then consumption of electricity would not be so less, which proves the fact that the tenant is deposing falsely that his family in his absence had been residing in the demised premises.

22 In addition thereto, it would be noticed that the tenant has led no cogent and convincing evidence be it oral or documentary to suggest that it was his family, who actually residing in the demised premises. He could conveniently produced

on record the receipts of LPG gas consumption or ration procured or even proved salary slip of his son, who claimed to have worked with husband of the landlord at Summerhill.

23 What would be the meaning of "occupy" as used in the Rent Act is no longer *res integra* and was considered by the Hon'ble Supreme Court in ***Dunlop India Ltd.'s case (supra)***, wherein it was held as under:-

> *"21. The word "occupy" used in Section 11(4)(v) is not synonymous with legal possession in technical sense. It means actual possession of the tenanted building or use thereof for the purpose for which it is let out. If the building is let out for residential purpose and the tenant is shown to be continuously absent from the building for six months, the Court may presume that he has ceased to occupy the building or abandoned it. If the building is let out for business or commercial purpose, complete cessation of the business/commercial activity may give rise to a presumption that the tenant has ceased to occupy the premises. In either case, legal possession of the building by the tenant will, by itself, be not sufficient for refusing an order of eviction unless the tenant proves that there was reasonable cause for his having ceased to occupy the building."*

24 Dealing with some what similar case, this Court in ***Amrit Lal vs. Ramawati Sahu, 2007 1 Shim. LC 55***, held as under:-

"6. There is also statement proved by a witness from the electricity office showing the consumption of electricity through the meter installed in the demised premises. As per this statement only 60 units of electricity, 50 units as reflected in the bill for July, 1990 and 10 units as for September, 1990, were reflected in the bill consumed during the relevant period. This statement also shows that tenant-revision petitioner does not reside in the premises and that only occasionally some people visit the place and stay there.

7. As already noticed, even the tenant himself says that his brothers, sisters etc. visit the premises and stay there for sometime, which means that the premises are being used only as a tourist resort by the relatives of tenant- revision petitioner. It is by now well settled that occasional visit to the tenanted premises by the tenant do not amount to the tenant continuing in occupation of the premises. Reference in this behalf may be made to Sohan Lal Khanna V. Amar Singh, 2000(2) Latest HLJ 1008, St. Michaeal's Cathedral Catholic Club v. Smt. Harbans Kaur Nayani, 1997(1) Sim. L.C.237 and Gurbachan Singh V. Ravinder Nath Bhalla and others, Latest HLJ 2006(HP) 177. Therefore, no fault can be found with the finding by the Appellate Authority that the tenant had ceased to occupy the premises for a period of 12 months, before the institution of the petition".

25 Since it is duly established on record that during the disputed period consumption of electricity was minimal, the Court would be well within its right to draw presumption that during the disputed period, tenant or his family did not reside in the demised premises.

26 However, Mr. Y. P. Sood, Advocate, would vehemently argued that merely because the tenant had not been residing in the demised premises continuously for 12 months in itself is not a ground for his eviction because it is further required to be proved by the landlord that this non-occupancy at the behest of the tenant was without any reasonable cause.

27 As observed above, the term "reasonable" has already been explained by the Hon'ble Supreme Court in ***Dunlop India Ltd.'s case (supra)*** as extracted above.

28 Admittedly, the tenant was transferred from Government Primary School Beolia, Shimla to Government Primary School, Naini, Tehsil Rampur and was required to have joined his duties at the place of posting, but then this alone cannot be held to be a ground to permit the tenant to occupy the demised premises merely because he can afford to pay the rent, especially when the tenant is admittedly not the permanent resident of Shimla Town and is resident of Village Maraog, Chopal, where he is having his ancestral house and landed property and had taken the demised premises on rent only on account of his being posted at Shimla. Once, the posting at Shimla came to an end, then the tenant could not have been permitted to squat over the demised premises unless

and until, he or anyone of his family members had been residing there continuously.

29 As observed above, mere fact that the tenant has the capacity to pay the rent to the landlord in itself will not confer a right upon the tenant to retain the demised premises indefinitely, especially when he has ceased to occupy the same continuously for a period of 12 months and thereby made himself liable for ejection under the Rent Act.

30 Similar reiteration of law can be found in the judgment rendered by this Court in ***Mohinder Kumar Walia and ors. vs. Prakasho Devi and ors., 2016(3) Shim. L C 1301***.

31 In view of the aforesaid discussion, I find no merit in this petition and the same is accordingly dismissed, so also the pending application(s) if any, leaving the parties to bear their own costs.

22.7.2019 **(Tarlok Singh Chauhan)**
(pankaj) **Judge**