

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

C.R. No. 4038/2013

Reserved on: 10.12.2013

Decided on: 31.12. 2013

Deepak Boot House and another.Petitioners.

Versus

Dr. Piyare Lal SoodRespondent.

Coram

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the petitioners : **Mr. R.L. Sood, Senior Advocate with Mr. Arjun Lall, Advocate.**

For the respondent : **Mr. Ajay Kumar, Sr. Advocate with Mr. Dheeraj Vashisht, Advocate.**

Justice Rajiv Sharma, Judge:

This revision petition is directed against the judgment dated 12.4.2013 rendered by the Appellate Authority in Rent Appeal No. 34-S/14 of 2010.

2. "Key facts" necessary for the adjudication of this petition are that respondent-landlord (hereinafter referred to as the "landlord" for convenience sake) filed a petition for eviction of petitioners-tenants (hereinafter referred to as the "tenants" for convenience sake) under section 14 of the Himachal Pradesh Urban Rent Control Act, 1987. According to the landlord, premises are situated

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

in Ward No.13, Municipal Corporation and the same are known as building No.98, Lower Bazaar, Shimla. Nature of the premises is non-residential. These were let out to tenants in the year 1960-61. Electricity fittings etc. were provided by the landlord. It is further averred that rent of the premises was ` 2234/- per annum. Rent of similar accommodation in the same locality is more than ` 15,000/- per month. Eviction of the tenant has been sought on the ground that the building is about 100 years old and has become unfit and unsafe for human habitation. Eviction of the tenant has also been sought on the ground that the premises are *bona fide* required by the landlord for rebuilding and reconstruction, which cannot be carried out without the premises being vacated. Landlord has sufficient funds for reconstruction and after reconstruction the building can be put to better use.

3. Petition was resisted by the tenants. According to the tenants, building in question has common walls with adjoining building and unless the adjoining building is demolished, reconstruction of the building of landlord was not possible and as such requirement of the landlord was *mala fide*. The building is situated in the core area of Shimla and no construction can take place in the core area and the building is not more than 100 years old, as alleged. Building is made of **Dhajji** walls and wooden frames and is in good condition. Landlord is in use and occupation of third floor of the building and in one floor, wife of the

landlord is running a clinic.

4. Rent Controller framed issues on 26.6.2009. He allowed the petition on the ground that the suit premises have become unfit and unsafe for human habitation and the same are *bona fide* required by the landlord for reconstruction, which could not be carried out without the suit premises being vacated by the tenants. The tenants feeling aggrieved with the order dated 6.4.2010 filed an appeal before the Appellate Authority. The Appellate Authority dismissed the same on 12.4.2013. Hence, the present petition.

5. Mr. R.L. Sood, learned Senior Advocate has vehemently argued that landlord has failed to prove that the premises have become unsafe and unfit for human habitation. He also contended that both the courts below have erred in law by accepting the plea of landlord that premises are required *bona fide* for rebuilding and reconstruction which could not be carried out without the same being vacated by the tenants. He further contended that landlord himself is residing in the same building and no notice has been issued by the Municipal Corporation to the landlord to demolish the building.

6. Mr. Ajay Kumar, learned Senior Advocate has supported the order and judgment passed by both the courts below.

7. I have heard the learned counsel for the parties and have gone through the records carefully.

8. Relationship of landlord and tenants has not been disputed. The identification of the building and rate of rent i.e. ` 2234/- per annum of the suit premises has also not been denied. Landlord Piyare Lal Sood has appeared as AW-1. According to him, suit premises are situated in ground floor of building No.98 as per location plan Ex.AW-1/A. The tenancy was created in the year 1960-61. According to him, tenant No.2 is running a shop in the name of Deepak Boot House. Electricity fittings etc. were provided by the landlord. Rent of the shop is ` 2234/- per annum. The building is 100 years old. It was constructed with **Dhajji** walls. Cracks have developed in the floor. The material used in the construction of premises has also deteriorated. The premises have outlived its life. The premises have become unsafe and unfit for human habitation. He has admitted that he is residing in second and top floors of the building. According to him, he has no other suitable accommodation for residence. He intends to rebuild and reconstruct RCC building. He intends to increase the utility of the premises to earn more profit. He has referred to inspection carried by AW-4 Mr. B.C. Sharma. He has sufficient funds to rebuild and reconstruct the building. He has proved copy of PPF account Ex.AW-2/B. He has also filed eviction petition against two tenants. The building is situated in commercial locality. Utility of the building will be increased after the same is rebuilt and reconstructed. He has

admitted that his wife is running a clinic in the same premises. He has not received any notice from the Municipal Corporation. He is residing in the same premises for the last 40 years.

9. AW-2 Raj Pal has deposed that first tax assessment was conducted on 23.11.1921 vide Ex.AW-2/A. According to him, the premises are 90 years old as per record.

10. AW-3 Yashwant Singh had brought the original plan Ex.AW-3/A. He had also brought original plan for the year 1889. According to him, the premises were 100 years old.

11. AW-4 B.C. Sharma is material witness. He has prepared the technical report Ex.AW-4/A. He has retired as Engineer from H.P. State Electricity Board. He has obtained diploma in Civil Engineering. He has personally inspected the building on 25.11.2008. According to him, the walls are of Dhajji. The premises are 100 years old. The building has outlived its life. It has become unfit and unsafe for human habitation. The walls have developed cracks and the floors have also damaged. The building is in dilapidated condition. He has taken photographs Ex.AW-4/C-1 to Ex.AW-4/C-12. Eviction of the tenants is necessary for RCC structure. He has denied the suggestion that there is a common wall.

12. RW-2 Kewal Krishan (tenant) has deposed that he is running shop for the last 40 years. The building is

four storeyed. According to him, the building is 50-60 years old. It is in good condition. Walls and roof of building are in proper condition. The building is not in dilapidated condition. He has deposed that the premises have common walls. According to him, until the owners of common walls did not consent for construction, new construction could not be carried. The building is situated in core area. Landlord himself is residing in third and fourth floors. Landlord's wife is running a clinic on the same floor.

13. RW-1 Sanjeev Kumar has deposed that he is running a shop in building No. 97 since 1997 in the ground floor.

14. RW-3 Shiv Saran Dass has proved Ex.RW-3/A. He has retired as Assistant Engineer from HPPWD. He has inspected the building at the instance of tenants on 26.10.2009. According to him, the building is in good condition. It is fit for human habitation. Minor cracks have developed in the building, which can be repaired by way of cement. He did not take photographs of the building. According to him, the building cannot be reconstructed without the consent of other co-owners since there are common walls. The building falls in the core area. No construction is permissible in the core area. However, he has categorically admitted that for raising RCC construction, vacation of premises is essential. He has also admitted that the value of the building would be increased

if it is reconstructed. However, he could not place any notification on record whereby construction in the core area has been banned.

15. RW-4 Pitamber Sharma has proved the statement of Pyare Lal Ex.RW-4/A.

16. RW-5 Jamna Dass has deposed that building plan has been rejected on 28.7.2009 and no building plan has been submitted. He has testified that landlord has submitted plans for reconstruction on the old lines.

17. RW-6 Hem Kumar, Junior Draftsman has admitted that in the core area reconstruction is permissible with the permission of the State Government.

18. RW-7 Raj Pal has proved Ex.RW-7/1 to RW-7/5. According to him, landlord was the owner of the building.

19. What emerges from the statements of AW-1 Pyare Lal and AW-4 B.C. Sharma is that building is 100 years old. It is made of Dhajji walls. The walls have developed cracks and floors have damaged. The building has outlived its life. It has become unfit and unsafe for human habitation. According to AW-4 B.C. Sharma, Technical Expert, the building cannot be reconstructed without vacating the premises by tenants. He has proved his report Ex.PW-4/A. He has obtained diploma in Civil Engineering. He has retired from H.P. State Electricity Board as Civil Engineering. As far as RW-3 Shiv Sharan Dass is concerned, he has admitted that cracks have developed in

walls of the building though it can be repaired. He has admitted that for construction of RCC structure vacation of premises is necessary. He has also admitted that by reconstruction utility and value of the building would increase. AW-3 Yashwant Singh has proved plan Ex.AW-3/A sanctioned in the year 1889. It also establishes that premises are 100 years old. Before filing eviction petition on this ground issuance of notice by Municipal Corporation is not *sine qua non*. AW-4 B.C. Sharma has also deposed that the present structure is the only structure existing in the area and rest of the owners have already reconstructed their own buildings. AW-3/A has no bearing as far as present *lis* is concerned. It has come on record that present building is four storeyed and the map had been submitted though rejected.

20. Mr. R.L. Sood, learned Senior Advocate has vehemently argued that respondent himself is residing in the premises and his wife is running a clinic. It has come in the statement of AW-1 that he has no other suitable accommodation available with him.

21. Mr. R.L. Sood, learned Senior Advocate has also argued that there is a common wall of building Nos.97 and 98. This question will only be determined when the landlord submits the construction plan of the building and the construction work is undertaken. The premises are situated in a commercial area. Landlord has sufficient funds available with him. He has proved on record copy of

PPF account book Ex.AW-1/B. Sanctioning of building plan is not *sine qua non* for filing eviction petition on the ground that the premises are required by the landlord for rebuilding and reconstruction. The Technical Expert produced by the landlord AW-4 B.C. Sharma has produced on record photographs Ex.AW-4/C-1 to Ex.AW-4/C-12. RW-3 Shiv Sharan Dass has not produced on record any photographs. Photographs have only corroborating value to have visual impression whether the building is safe or unsafe or has outlived its life. It has come in the statement of RW-6 Hem Kumar, Junior Draftsman, that in the core area also reconstruction is permissible with the permission of the State Government.

22. The courts below have rightly construed the oral as well as documentary evidence led by the parties. The landlord has proved that present premises have become unfit and unsafe for human habitation and the building is required by the landlord *bona fide* for rebuilding and reconstruction, which cannot be carried without vacating the same by the tenants.

23. Their Lordships of the Hon'ble Supreme Court in ***Metalware and Company etc. versus Bansilal Sarma and Company etc.*** (1979) 3 SCC 398 while interpreting section 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control Act, 1960 have held that the Rent Controller is required to take into account all the surrounding circumstances including not merely the factors of the landlord being possessed of sufficient

means or funds to undertake the project and steps taken by him in that regard but also the existing condition of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction. Their Lordships have further held that if the building happens to be decrepit or dilapidated it will readily make the bona fide requirement of the landlord, though that by itself in the absence of any means being possessed by the landlord would not be sufficient. Their Lordships have held as under:

“6. As stated earlier it cannot be disputed that the phrase used in S. 14 (1) (b) of the Act is 'the building is bona fide required by the landlord' for the immediate purpose of demolition and reconstruction and the same clearly refers to the bona fide requirement of the landlord it is also true that the requirement in terms is not that the building should need immediate demolition and reconstruction. But we fail to appreciate how the state or condition of the building and the extent to which it could stand without immediate demolition and reconstruction in future would be a totally irrelevant factor while determining "the bona fide requirement of the landlord". If the Rent Controller has to be satisfied about the bona fide requirement of the landlord which must mean genuineness of his claim in that behalf the Rent Controller will have to take into account all the surrounding circumstances including not merely the factors of the landlord being possessed of sufficient means or funds to under take the project and steps taken by him in that regard but also the existing condition of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction. All these factors being relevant must enter the verdict of the Rent Controller on the question of the bona fide requirement of the landlord under S. 14 (1) (b). In a sense if the building happens to be decrepit or dilapidated it will readily make for the bona fide requirement of the landlord, though that by itself in the absence of any means being possessed by the landlord would not be sufficient. Conversely a landlord being possessed of sufficient means to under take the project of demolition and

reconstruction by itself may not be sufficient to establish his bona fide requirement if the building happens to be a very recent construction in a perfectly sound condition and its situation may prevent its being put to a more profitable use after reconstruction. In any case these latter factors may cast a serious doubt on the landlord's bona fide requirement. It is, therefore, clear to us that the age and condition of the building would certainly be a relevant factor which will have to be taken into account while pronouncing upon the bona fide requirement of the landlord under S. 14 (1) (b) of the Act and the same cannot be ignored.

7. We would like to observe that each side has adopted an extreme stand on the question at issue which is obviously incorrect. On the one hand counsel for the appellant urged that the words 'bona fide required' refer to the condition of the building and not to the honest or bona fide intention entertained by the landlord to undertake demolition and reconstruction, suggesting thereby that the condition of the building should be a decisive factor while counsel for the respondent on the other hand contended that that aspect was totally irrelevant and the bona fide requirement of the landlord should be determined on the basis of factors such as the financial capacity of the landlord to undertake the project and whether he had taken any steps in that behalf etc. We do not agree that old age and dilapidated condition of the building is a sine qua non or a decisive factor for eviction under S. 14 (1) (b) nor is it possible to accept the view that the said circumstances in totally irrelevant in pronouncing upon the bona fide requirement of the landlord. We are clearly of the view that the age and existing condition of the building - whether it is a recent construction or very old and whether it is in a good and sound condition or has become decrepit or dilapidated - are relevant factors forming part of 'all the circumstances' that having to be considered while determining the bona fide requirement of the landlord under S. 14 (1) (b) of the Act and in the totality of the circumstances these factors may assume lesser or greater significance depending upon whether in the scheme of the concerned enactment there is or there is not a provision for reinduction of the evicted tenant into the new construction. Such a view would be in accord with the main objective of the benign legislation enacted with the avowed intention of giving protection to the tenant."

24. In **P. ORR and sons (P) Limited versus Associated Publishers (Madras) Limited**, (1991) 1 SCC 301, their Lordships of the Hon'ble Supreme Court have held that the Tamil Nadu Buildings (Lease and Rent Control Act, 1960) does not accept the requirement by the landlord as a bona fide requirement within the meaning of the provision unless the condition of the building, in the context of the relevant circumstances, requires demolition. Their Lordships have held as under:

"30. We accordingly hold that S. 14(l)(b) is satisfied only if the building is bona fide required by the landlord for the "immediate", i.e., direct, sole and timely purpose of demolishing it with a view to erecting a new building on the site of the existing building. Various circumstances such as the capacity of the landlord, the size of the existing building, the demand for additional space, the condition of the place, the economic advantage and other factors justifying investment of capital on reconstruction may be taken into account by the concerned authority in considering an application for recovery; but the essential and overriding consideration which, in the general interests of the public and for the protection of the tenants from unreasonable eviction, the legislature has in mind is the condition of the building that demands timely demolition by reason of the extent of damage to its structure making it uneconomical or unsafe to undertake repairs. While the condition of the building by itself may not necessarily establish the bona fide requirement under clause (b), that condition is not only one of the various circumstances which may be taken into account by the Controller, but it is the essential condition in the absence of which it would not be possible for the landlord to prove that he has a bona fide requirement which is timely, directly and solely for the purpose of demolition of the building. The Act does not accept the requirement by the landlord as a bona fide requirement within the meaning of the provision unless the condition of the building, in the

context of the relevant circumstances, requires demolition. These are matters which are to be proved by evidence.”

25. It will be apt at this stage to refer to section 14 (b) of the Tamil Nadu Buildings (Lease and Rent Control Act, 1960, which reads thus:

“14 (b)- that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished.”

26. Section 14 (b) of the Tamil Nadu Buildings (Lease and Rent Control Act, 1960 is not *pari materia* with section 14 (3) (c) of the Himachal Pradesh Urban Rent Control Act, 1987. Section 14 (3) (c) of the Himachal Pradesh Urban Rent Control Act, 1987 reads thus:

“14 (3) (c)- in the case of any building or rented land, if he requires it to carry out any building work at the instance or 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 or is required bonafide by him for carrying out repairs which can not be carried out without the building or rented land being vacated or that the building or rented land is required bonafide by him for the purpose of building or re-building or making these to any substantial additions, or alterations and that such building or re-building or addition or alteration can not be carried out without the building or rented land being vacated.”

27. Their Lordships of the Hon'ble Supreme Court in ***Shyamlal Agarwal versus Ratanlal Malviya (dead) by LRs, 1991 Supp.*** (2) SCC 449 had the occasion to construe section 12 (1) (h) of M.P. Accommodation Control Act, 1961. Section 12 (1) (h) of the Act permits eviction of tenant from any accommodation on the ground that the accommodation is

required bona fide by the landlord for the purpose of building or rebuilding or making therein any substantial addition or alteration. The language employed in section 12 (1) (h) of the M.P. Accommodation Control Act, 1961 is more akin to the phraseology employed in section 14 (3) (c) of the Himachal Pradesh Urban Rent Control Act, 1987. Their Lordships after interpreting section 12 (1) (h) have held that the building should be in a dilapidated condition requiring repair or demolition was not a statutory requirement. Their Lordships have further held that there is no statutory requirement that while considering the *bona fide* need of the landlord for reconstruction of the accommodation the building must necessarily be in a dilapidated condition requiring repair without demolition. However, their Lordships have held that even in the absence of such a provision dilapidated or otherwise, condition of the building would be one of the relevant circumstance while considering the *bona fide* of the landlord under section 12 (1) (h) of the Act although that could not be a decisive circumstance in determining the question of *bona fide* need. Their Lordships have held as under:

“3. Learned counsel for the appellant urged that the High Court has failed to record any finding that the shop in dispute was in dilapidated condition or that, it required reconstruction, in the absence of such a finding the landlord' & bona fide need could not be upheld. He placed reliance on a number of decisions but since none of them relate to interpretation of S. 12(1)(h) of the Madhya Pradesh Accommodation Control Act, 1961, it is not necessary to refer to those decisions. S. 12(1)(h) of the Act permits eviction of tenant from any accommodation on the-ground that the accommodation is required bona fide by the landlord

for there purpose of building or rebuilding or making therein any substantial, addition or alteration. There is no statutory requirement that while, considering the bona fide need of the land-lord for reconstruction of the accommodation the building must necessarily be in a dilapidated condition requiring repair, or demolition. Unlike other Rent Control Laws the Madhya Pradesh Accommodation Act does not expressly provide for any such condition. But even in the absence of such a provision dilapidated or otherwise, condition of the building would be one of the relevant circumstance while considering the bona fide need of the landlord under S. 12(1)(h) of the Act, although that could not be a decisive circumstance in determining the question of bona fide need. Bona fide requirement of the landlord under S. 12(1)(h) may include many relevant factors i.e. the need of the landlord to put the building for better use to obtain higher income, the condition of the building, shortage of accommodation and necessity of having larger accommodation, the capacity of the landlord to rebuild the accommodation, his financial resources etc. All these factors are relevant for the purposes of determining tile question whether the accommodation is required bona fide by the landlord for the purpose of rebuilding the accommodation.”

28. Their Lordships of the Hon'ble Supreme Court in ***Vijay Singh and others versus Vijayalakshmi Ammal***, (1996) 6 SCC 475 had again the occasion to consider section 14 (1) (b) of the Tamil Nadu Rent Control Act. Their Lordships have culled out the following principles:

“For granting permission under Section 14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bonafide or not. For recording a finding that requirement for demolition was bonafide, the Rent Controller has to take into account: (1) bonafide intention of the landlord for from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act.

These are some of the illustrative factors which have to be taken into consideration before an order is passed under Section 14(1)(b). NO court can fix any limit in respect of the age and condition of the building. That factor has to be taken into consideration along with other factors and then a conclusion one way or the other has to be arrived at by the Rent Controller.”

29. The principle laid down in **Vijay Singh and others versus Vijayalakshmi Ammal**, (1996) 6 SCC 475 were explained and reiterated in **Amaiappa Transport versus N.S. Rajulu**, (2002) 9 SCC 437 as well.

30. In **R.V.E. Venkatachala Gounder versus Venkatesha Gupta and others**, (2002) 4 SCC 437 their Lordships of the Hon'ble Supreme Court have laid down the following parameters under section 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960:

“11. We may refer to two decisions of Madras High Court. In S.Raju and others Vs. K. Nathamani, 1998 (3) LW 214, the Constitution Bench decision has been followed and it has been held that when new buildings with modern amenities have come up in that locality, naturally the building in question may become unsuitable to the surroundings and a liability, in its present condition, to the landlord. Keeping the building in the same condition will amount to asking the landlord to shoulder the burden for ever. Tenants may be satisfied with the present state of the building since they have to pay only a nominal rent but the Rent Control Legislation, beneficial to the landlord and the tenant both, should be interpreted in that way. For the purpose of proving his bona fides the landlord need only show that he has got the capacity to raise the necessary funds. In A.N. Srinivasa Thevar Vs. Sundarambal alias Prema W/o. Chandrakumar, 1995 (2) LW 14, even before the decision by Constitution Bench in Vijay Singh's case was available, it was held in the light of the decision in P. Orr & Sons that the availability of the following factors was sufficient to make out a case of bona fide requirement under Section 14(1)(b):

"(a) Capacity of the landlord to demolish and to reconstruct is undisputed and also proved satisfactorily; (b) The size of the existing building occupies only one third of the site, leaving two third behind vacant and unutilized; (c) Demand for additional space: The demised premises is situated in a busy locality. Therefore, there is a great demand for additional space in the locality which could be met by demolishing the existing small building and putting up a larger building providing for future development vertically also, by building pucca terraced building; (d) The economic advantage: A modern construction of a larger building shall certainly yield better revenue and also appreciate in value, when compared to the asbestos sheet roofed old building."

In that case, it was observed that the existing building was an old, out-model asbestos sheet building proposed to be replaced with better and modern building which would provide for better quality accommodation to the needs of the present days as the preservation of such building in a busy locality of a town shall not only be an eyesore but also against the souring public demand for additional space. Viewed from the angle of general interest of the public which, according to the decision in P. Orr & Sons is one of the considerations, it was observed that a big site should yield to a larger modern building with an increased and enlarged accommodation having better facilities to solve the ever increasing demand for more space. Stalling growth and development for the sake of one tenant who is in occupation of an old model building constructed with mud and mortar and asbestos sheets occupying only one third of the site was held to be not conducive to public interest. We approve the statement of law and the approach adopted by Madras High Court in both the above said decisions. The structural and physical features and the nature of the construction of the building cannot be ignored. Even in P. Orr & Sons, this Court was of opinion that various circumstances, such as the capacity of the landlord, size of the existing building, the demand for additional space, the condition of the place, the economic advantage and other factors, justifying investment of capital on reconstruction may be taken into account by the concerned authorities, while considering the requirement for reconstruction of the building as the essential and overriding consideration in the general interest of the public and for the protection of the tenant from unreasonable eviction."

31. Their Lordships of the Hon'ble Supreme Court in ***Jagat pal Dhawan versus Kahan Singh (dead) by LRs and others***, (2003) 1 SCC 191 had the occasion to interpret clause (c) of sub section (3) of section 14 of the Himachal Pradesh Urban Rent Control Act, 1987. Their Lordships have held that while trying eviction petition on the ground of demolition and reconstruction, Court may look into the age and condition of building, availability of necessary funds, and whether building plans have been sanctioned by local authority in order to assess landlords' bona fides, even if the statute concerned has not specifically made them ingredients of the ground for eviction. Their Lordships have further held that eviction should be allowed where no material is placed on record to show that landlord's real intention is only to evict the tenant rather than to raise new construction. In this case also the building was located in a busy commercial locality, landlord had received sanction for his building plans, had sufficient funds and wished to demolish the 100 year old suit building to construct a more spacious three storey structure. Their Lordships have further held that if statutory provision is silent on the subject, bona fide, cannot be doubted solely on ground that building concerned is not in danger of collapse, though old and outdated. Their Lordships have held as under:

“6. Section 14 (3) (c) provides inter alia that a landlord may apply to the controller for an order directing the tenant to put the landlord in possession of tenancy premises in case of any building or rented land being required bona fide by him for the purpose of building or rebuilding which cannot be carried out without the building or rented land being vacated.

The provision does not have as an essential ingredient thereof and as a relevant factor the age and condition of the building. The provision also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of tenant. However still, suffice it to observe, depending on the facts and circumstances of a given case, the court may look into such facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the bona fides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be bona fide.

10. The locality where the premises are situated has, with the lapse of time, become a busy commercial locality. The structure of the building is more than 100 years old. It is in mud mortar and with slates' roofing. Instead of outdated two floor space, the landlord proposes to construct a modern three-storeyed building which would obviously provide additional space and much better return to the landlord. The landlord has stated that he had no other residential house of his own available with him and having reconstructed the building he would like to shift his residence too in his own newly constructed house. The bona fides of such a requirement could not have been doubted solely on the ground that the structure of the building, though old and outdated, had not gone so weak as was needed to be demolished immediately.

11. So far as the neighbours are concerned, none has objected to the proposed reconstruction. In any case that is a matter to be settled by the landlord with his neighbours. The learned counsel for the appellant submitted during the course of hearing, and rightly in our opinion, that even if the neighbours were not agreeable to have the common wall demolished and replaced by a new wall the appellant was prepared to raise additional walls of his own next to the common walls, if any, and rest his entire structure on such walls. This obviates the need of proving consent of the adjoining building owners for the proposed reconstruction.

14. In the above said circumstances we are clearly of the opinion that relief of eviction as sought for could not have been denied to the appellant. There is no material available to hold that the landlord has something else in his mind such as getting rid of the tenant without raising construction. Sub-section (5) of section 14 of the Act protects the interest of the tenant by guarding against malafide evictions. It provides that where a landlord has obtained possession of the building or rented land for the purpose of building or rebuilding and puts the building to any other use or lets it out 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. This provision would not permit the building from which the tenant is being evicted being subjected to any other user or misuse.”

32. Their Lordships of the Hon'ble Supreme Court in

P.S. Pareed Kaka and others versus Shafee Ahmed Saheb, (2004) 5 SCC 241 have held that even a good building can be demolished if landlord considers it to be unsuitable for him and there is no need for the landlord to prove that condition of the building was such that it required immediate demolition. Their Lordships have held as under:

“11. Law is well settled on this aspect. Even if the building is in a good condition, if it is not suitable for the requirement of the landlord, he can always demolish even a good building and put up a new building to suit his requirements. It is not necessary for the landlord to prove that the condition of the building is such that it require immediate demolition particularly when the premises is required by the landlord. Therefore, it has to be held that the finding of the trial Court cannot be sustained and the High Court on reappreciation of the evidence, rightly so, held that the landlord has established that his need for all the four petition schedule premises is bona fide and reasonable.”

33. Their Lordships of the Hon'ble Supreme Court in

S. Venugopal versus A. Karruppusami and another, (2006)

4 SCC 507 had again the occasion to consider section 14 (1) (b) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960. Their Lordships have held that even if the building is not in a dilapidated condition, it may be demolished for the purpose of erecting a new building on the same site. Their Lordships have enumerated the following factors:

- i) Increase in commercial value of the location which would fetch landlord higher returns from his property apart from serving his own needs,
- ii) Funds available with the landlord to reconstruct may not be relevant when builders, financiers and banks are willing to advance the requisite funds, moreover, when the landlord has obtained plan approval for construction.

34. Their Lordships have further held that the Court has to take into account bona fide intention of the landlord, the age and condition of the building and the financial position of the landlord to demolish and erect a new building. Their Lordships have held as under:

"7. On the question of demolition and reconstruction of the premises in question, much was sought to be made out of the fact that the condition of the building had not been ascertained and, while according to the tenants it was not in a dilapidated condition, according to the landlord it was in a dilapidated condition. We do not attach much importance to the question as to whether the building was or was not in a dilapidated condition because Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short "the Act") contemplates a building which is bona fide required by the landlord for the immediate purpose of demolishing it, and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. Therefore, Section 14(1)(b) does not contemplate that the building sought to be demolished must necessarily

be in a dilapidated condition. Even if a building is not in a dilapidated condition, it may be demolished for the purpose of erecting a new building on the same site.

8. In the instant case, it is obvious that the locality in which the premises in question is located has developed into a commercial locality. The building needed by the landlord is a single-storey building, whereas a large number of multi-storeyed buildings have come up in that locality. The landlord realises that if he demolishes the old structure and erects a new multi-storeyed building, he will get a much better return of his investment. He, of course, asserts that in the newly constructed building he also requires space for conducting his own business.

9. There is also evidence on record to establish that the landlord had applied to the competent authorities and got the plans approved for construction of a new building after demolishing the old structure. The landlord also asserted that he wanted to invest a sum of Rs One-and-a-half lakhs on the construction. The High Court, however, after recording a finding ' of fact that the building was in a dilapidated condition, rejected the claim of the landlord on the ground that he had not satisfactorily established before the Court that he had the means to reconstruct the building and that he had not given details relating to his means to construct a new building. Moreover, he had not disclosed, how was he going to raise funds for reconstruction.

10. It is true that in granting permission under Section 14(l)(b) of the Act, all relevant materials for recording a finding about the requirement of the landlord for demolishing the building and reconstruction of a new building have to be taken into account. The Rent Controller reached the conclusion that the landlord bona fide requires the premises for demolition and reconstruction of a new building. This Court has observed in *Vijay Singh v. Vijayalakshmi Ammal [(1996) 6 SCC 475]* that the court must take into account the bona fide intention of the landlord, the age and condition of the building, and the financial position of the landlord to demolish and erect a new building. These are some of the illustrative factors which have to be taken into account and, they are by no means conclusive.

11. In the instant case, we find that the property owned by the landlord, whatever may have been its value in the past, has acquired commercial value and, therefore, the

landlord wishes to demolish the old single-storey structure and to construct a multi-storeyed building which may fetch him higher rent, apart from serving his own needs. The landlord had already applied to the competent authorities and got the plans approved. Taking into consideration all these reasons, we are convinced that the landlord bona fide intends to demolish the old building and to construct a new one. Raising funds for erecting a structure in a commercial centre is not at all difficult when a large number of builders, financiers as well as banks are willing to advance funds to erect new structures in commercial areas. This is apart from the fact that the landlord has himself indicated that he was willing to invest a sum of Rs One-and-a-half lakhs of his own, and he owns properties and jewellery worth a few lakhs.

35. Their Lordships of the Hon'ble Supreme Court in ***Hari Dass Sharma vs. Vikas Sood and others***, (2013) 5 SCC 243 have categorically laid down in para 13 that availability of building plans duly sanctioned by the local authorities is not an ingredient of section 14 (3) (c) of the H.P. Urban Rent Control Act, 1987 and, therefore, cannot be a condition precedent to the entitlement of the landlord for eviction of the tenant. Their Lordships have held as under:

"13. In Jagat Pal Dhawan v. Kahan Singh (dead) by L.Rs. & Ors. (supra), this Court had the occasion to consider the provisions of Section 14(3)(c) of the Act and R.C. Lahoti J. writing the judgment for the Court held that Section 14(3)(c) does not require that the building plans should have been duly sanctioned by the local authorities as a condition precedent to the entitlement of the landlord for eviction of the tenant. To quote from the judgment of this Court in Jagat Pal Dhawan v. Kahan Singh (dead) by L.Rs. & Ors. (supra):

"The provision also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his

entitlement to eviction of the tenant. However still, suffice it to observe, depending on the facts and circumstances of a given case, the court may look into such facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the bona fides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be bona fide."

17. In fact, the only question that we have to decide in this appeal filed by the appellant is whether the High Court could have directed that only on the valid revised/renewed building plant being sanctioned by the competent authority, the order of eviction shall be available for execution. The High Court has relied on the decision of this Court in **Harrington House School v. S.M. Ispahani & Anr.** (*supra*) and we find in that case that the landlords were builders by profession and they needed the suit premises for the immediate purpose of demolition so as to construct a multi-storey complex and the tenants were running a school in the tenanted building in which about 200 students were studying and 15 members of the teaching staff and 8 members of the non-teaching staff were employed and the school was catering to the needs of children of non-resident Indians. This Court found that although the plans of the proposed construction were ready and had been tendered in evidence, the plans had not been submitted to the local authorities for approval and on these facts, R.C. Lahoti, J, writing the judgment for the Court, while refusing to interfere with the judgment of the High Court and affirming the eviction order passed by the Controller, directed that the landlords shall submit the plans of reconstruction for approval of the local authorities and only on the plans being sanctioned by the local authorities, a decree for eviction shall be available for execution and further that such sanctioned plan or approved building plan shall be produced before the executing court whereupon the executing court shall allow a reasonable time to the tenant for vacating the property and delivering the possession to the landlord and till then the tenants shall remain liable to pay charges for use

and occupation of the said premises at the same rate at which they are being paid.

18. In the present case, on the other hand, as we have noted, the Rent Controller while determining the bonafides of the appellant-landlord has recorded the finding that the landlord had admittedly obtained the sanction from the Municipal Corporation, Shimla, and has accordingly passed the order of eviction and this order of eviction has not been disturbed either by the Appellate Authority or by the High Court as the Revision Authority. In our considered opinion, once the High Court maintained the order of eviction passed by the Controller under Section 14(4) of the Act, the tenants were obliged to give vacant possession of the building to the landlord and could only ask for reasonable time to deliver vacant possession of the building to the landlord and hence the direction of the High Court that the order of eviction could only be executed on the revised plan of the building being approved was clearly contrary to the provisions of Section 14(4) of the Act and the proviso thereto.

19. We accordingly allow the appeals, set aside the directions in Para 27 of the impugned judgment of the High Court, but grant time to the respondents to vacate the building within three months from today. We make it clear that it will be open for the respondents to apply for re-entry into the building in accordance with the proviso to clause (c) of Section 14(3) of the Act introduced by the Amendment Act, 2009. Considering, however, the peculiar facts and circumstances of the cases, there shall be no order as to costs."

36. In view of report AW-4/A, the landlord has duly proved that the building has become unsafe and unfit for human habitation. The walls, as noticed above, have developed cracks, floors are damaged and the construction material has deteriorated.

37. The Division Bench of Punjab and Haryana High Court in **Dr. Piara Lal Kapur vs Smt. Kaushalya Devi and another**, 1970 Rent Control Journal 536 has held that the expression "unsafe" and "unfit for human

habitation" in section 13 (3) (a) (iii) of the East Punjab Urban Rent Restriction Act are separated by the word "or" and not "and". It is, therefore, obvious that eviction under the relevant clause can be ordered where either of the two ingredients of the clause is proved, i.e. where either it is proved that the premises have become unsafe or (even if it is proved that they are not unsafe) if it is proved that they have become unfit for human habitation. The Division Bench has held as under:

"12. None of the cases cited by Mr. Roop Chand lays down the proposition of law for which he is canvassing. No case has been cited before us where it might have been laid down that the entire demised premises must be proved to have become unsafe or unfit for human habitation before the order for eviction can be passed under the relevant clause. A finding of the fact has been recorded in the present case by the Appellate Authority to the effect that at least a portion of the premises in dispute had in fact become unfit and unsafe for human habitation. The mere fact that the unsafe and unfit portion has been demolished or removed would not, in our opinion take the case out of the mischief of sub-clause (iii) of clause (a) of sub-section (3) of section 13 of the Act. A shop of the type with which we are concerned of which a part has been demolished including a part of its roof, cannot in any sense be said to be fit for human habitation. The expression "unsafe" and "unfit for human habitation" in section 13(3)(a)(iii) are separated by the word "or" and not "and". It is, therefore, obvious that eviction under the relevant clause can be ordered where either of two ingredients of the clause is proved, that is, where either it is proved that the premises have become unsafe or (even if it is proved that they are not unsafe) if it is proved that they have become unfit for human habitation. Even if it could be said that the remaining premises are by themselves no more unsafe for human habitation, a situation emphatically denied by the landlord, it is clear that the shop had become unfit for human habitation before demolition of a portion of its frontage and

roof, and mere demolition of the imminently dangerous portion has not made the shop either safe or fit or habitation.

38. Section 13 (3) (a) (iii) of the East Punjab Urban Rent Restriction Act, 1949 is *pari materia* with section 14 (3) (c) of the Himachal Pradesh Urban Rent Control Act, 1987.

39. Learned Single Judge of Punjab and Haryana High Court in ***Darshan Kumar v Manjit Kaur*** 2003 (2) Rent Control Reporter 13 has held since the building was old and made from Nank Shahi bricks and it was in dilapidated condition as there were holes in the roof and cracks in the walls, thus, it had become unsafe and unfit for human habitation. Learned Single Judge has held as under:

“5. Shri Arun Jain, learned counsel for the petitioner vehemently tried to persuade this Court that the findings recorded by the Courts below regarding the dilapidated condition of the demised premises is not a correct conclusion drawn from the evidence brought on the record. In this regard, he referred to some part of the statement of AW-3, the Local Commissioner, where he had stated that he had not gone inside the shop in dispute and he cannot say whether inside the shop water leaks through the roof or not. He also pointed out that landlords had constructed a room over the roof of the shop in question due to which the condition of the shop has become dilapidated.

6. I have considered the submissions made by the learned counsel for the petitioner and have perused the part of the statement of AW-3 to which he has referred. In my opinion there is no force in the contention of the petitioner. After going through the evidence on the record, I find no abrasion in the findings recorded by the Courts below and no different conclusion can be drawn from the evidence available on the record. Both the Courts below have recorded a finding of fact to the effect that the shop in

question is in dilapidated condition and has become unfit and unsafe for human habitation. The said findings cannot be interfered by this Court in this Civil Revision."

40. Learned Single Judge of Punjab and Haryana High Court in ***Suhag Wanti and others vs Som Dutt***, 2004 (1) Rent Control Reporter 211 has held that since the building was 100 years old and one portion of the roof of the verandah and one of the rooms had been given artificial supports, the building was unsafe and unfit for human habitation as per section 13 (3) (iii) of the East Punjab Urban Rent Restriction Act, 1949. Learned Single Judge has held as under:

"2. Som Dutt appeared as AW-1 and also examined Kuldip Singh Saini, an Architect as AW-2 and proved that site plan Ex. A1, rent note Ex. A2, report Ex. A3 and the plain Ex. A4. The tenants, on the other hand, examined Sohan Lal and Suresh Kumar Arora as RW-1 and RW-2, respectively. The Rent Controller examined the evidence on record and in particular that of Som Dutt and Kuldip Singh Saini, who had given his report Ex. P4 and concluded that the building had become unsafe and unfit for human habitation. The Controller also placed reliance on the statement of RW-1 Sohan Lal, one of the tenants, who admitted in his evidence that the entire building was made of small bricks embedded in mud plaster and that a shop which was a part of the same building and in possession of one Udho Ram had fallen down. He also admitted that when Kuldip Singh Saini had visited the site, he had observed that one portion of the roof of the verandah and one of the rooms had been given artificial supports. The Rent Controller accordingly held that the building appeared to be very old and had been made of smalls bricks and from the evidence of the respondents themselves, it appeared that it was in a very dilapidated condition. The ejectment application was accordingly allowed vide order dated 8.8.1985. The matter was thereafter taken in an appeal by the tenants, but the same too was dismissed by the Appellate Authority on

3.9.1987.

7. I have considered the arguments advanced. A concurrent finding of fact has been recorded by the Rent Controller and Appellate Authority against the tenants. Even otherwise I am of the view that the evidence adduced clearly proves the case of the landlord. Sohan Lal and Kuldip Singh Saini clearly proved but only the age of the building, but also the fact the verandah and one of the rooms were being propped up by artificial means. This fact was also admitted by RW-2 Suresh Kumar Arora and Sohan Lal, one of the tenants. It has also come in the evidence of the tenants that one shop in the same building which was in possession of Udhoo Ram had also fallen down. It is also the admitted position that the adjoining portion of the premises in dispute had already been demolished as also the chobaras in this portion of the premises in this demised premises. It is also virtually the admitted position that small bricks ceased to be used about 50 years prior to the date of the filing of the petition and the finding of the Rent Controller, therefore, that the building appeared to be more than 100 years old cannot be faulted in any manner. The revision petition is accordingly dismissed."

41. Mr. R.L. Sood, learned Senior Advocate has also relied upon ***Mehar Chand and another vs. Tilak Raj Girdhar***, 1982 Punjab Law Reporter 13. In this case, since the landlord had not coming with clean hands, order of ejection was not passed. In the case in hand, the pleas raised by the landlord are genuine and supported by oral as well as documentary evidence.

42. Mr. R.L. Sood has relied upon ***Piara Lal vs. Kewal Krishan Chopra***, (1988) 3 SCC 51. In this case, the roof of one of the rooms on the rear side had fallen down. However, in the instant case, it has been duly proved on the basis of statement of AW-4 B.C. Sharma that building has outlived its life. Its walls have developed cracks and floors

arez damaged. It is 100 years old. He also placed reliance on **Lekh Raj v. Muni Lal and others**, AIR 2001 SC 996. In this case, their Lordships of the Hon'ble Supreme Court have held that crack only on one side of wall is not indicative that condition of wall is not bad. In the present case, the landlord has duly proved that the walls have developed cracks and the floors are also damaged. The building material has also deteriorated. This report has been prepared by AW-4 B.C. Sharma.

43. Mr. R.L. Sood has also relied upon **Jagat Pal Dhawan vs. Kahan Singh (dead) by LRs and others**, (2003) 1 SCC 191. In this case, the Hon'ble Supreme Court has also held that the age and condition of building, availability of necessary funds, and whether building plans have been sanctioned by local authority in order to assess landlord's bona fides, even if the statute concerned has not specifically made them ingredients of the ground for eviction. However, eviction should be allowed where no material is placed on record to show the landlord's real intention is only to evict the tenant rather than to raise new construction.

44. Mr. R.L. Sood, learned Senior Advocate has placed strong reliance on **Pritam Kaur and others vs. Om Parkash and others**, 2004 (1) Punjab Law Reporter 632. In the case in hand, the landlord has categorically deposed that he has no sufficient accommodation available with him. The landlord has filed the petition seeking eviction of

the tenants on the ground that the premises have become unsafe and unfit for human habitation and he wants to reconstruct and rebuild the same. In the present case there is no evidence placed on record by the tenants that the respondent has alternative suitable accommodation available with him for his residential purposes. There is neither any perversity nor any infirmity in the manner in which both the courts below have appreciated the evidence.

45. Accordingly, in view of the observations and discussion made hereinabove, there is no merit in the petition and the same is dismissed. The tenants are directed to handover the vacant possession of the premises to the landlord within a period of three months from today. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.

**(Justice Rajiv Sharma),
Judge**

31.12. 2013

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