

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 2/2008
Reserved on: August 30, 2016
Decided on: August 31, 2016

Mr. Markar Masih

...Petitioner

Versus

Smt. Padma Sahni

...Respondent

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the petitioner: Mr. Bhupender Gupta, Senior Advocate
 with Mr. Neeraj Gupta, Advocate.

For the respondent: Mr. K.D. Sood, Senior Advocate with Mr.
 Rajnish K. Lal, Advocate.

Rajiv Sharma, Judge

This civil revision petition has been filed against Judgment dated 30.10.2007 rendered by the Appellate Authority Solan, District Solan, Himachal Pradesh in Rent Appeal N. 22-S/14 of 2006.

2. "Key facts" necessary for the adjudication of the present civil revision petition are that the respondent-landlady (hereinafter referred to as 'landlady' for convenience sake) instituted a petition under Section 14 of the Himachal Pradesh Urban Rent Control Act, against the petitioner-tenant (hereinafter referred to as 'tenant' for convenience sake) for his eviction from the premises situate on Rajgarh Road, which is stated to be a shop

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

i.e. non-residential and used by the tenant for the sale of meat. Eviction of the tenant has been sought on the ground that he has not paid rent since October, 2001 at the rate of ₹335/- per month. Other ground taken in the petition was that the tenant without the permission of the landlady and without the permission of the Rent Controller, 10 days prior to the filing of the petition, has done material alterations and illegal acts, which have impaired the value and utility of the shop in question. Tenant has constructed room by raising one partition wall made of bricks and cement inside the shop and has made two rooms of the shop. It is further alleged that the tenant had created big holes in main walls and raised /constructed huge RCC shelves and inserted three heavy iron bars in the holes so as to construct these shelves by adding extra load on the walls. It is further alleged that the tenant has also constructed a hose (*Khurli*) below the retaining wall inside the shop and retaining wall has become dangerous and can fall at any time. Tenant has also raised one poultry house made of iron bars by permanently welding the same with the main shutter frame of the demised premises and thus the value and utility of the premises has been diminished. He has also changed the user and created nuisance.

3. Reply was filed by the tenant. According to the tenant, rent upto 31.1.2001 stood already paid and rent upto 30.10.2002 was sent to the landlady. It was denied that any material

alterations and illegal acts have been done by him impairing the value and utility of the shop. No room has been constructed by the petitioner. Shop was already partitioned at the time when it was rented out in the year 1981. No holes have been dug in the walls. No *Khurli* has been constructed. It was denied that any permanent poultry house of iron bars has been raised by the tenant.

4. Issues were framed by the learned Rent Controller on 13.12.2004. He allowed the petition on 31.8.2006 and ordered eviction of the tenant by holding him to be in arrears of rent @ ₹335/- per month from 1.10.2004 till the date of order. It was also held that the tenant has materially impaired the utility and value of the demised premise and he was ordered to be evicted on this ground also. Tenant filed an appeal before the Appellate Authority. The appellate authority also dismissed the appeal on 30.10.2007. Hence, this civil revision.

5. Mr. Bhupender Gupta, learned Senior Advocate has vehemently argued that his client has not impaired the utility and value of the shop in question. According to him, no permanent structures have been raised by his client.

6. Mr. K.D. Sood, learned Senior Advocate has supported the order and judgment passed by the authorities below.

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

8. Landlady has appeared as PW-1. She has led her evidence by filing affidavit. According to the averments made in the affidavit tenant without her consent has constructed a water tank and also constructed partition wall. He has also raised two platforms. He has also dug holes in the ceiling. He has constructed two cages to keep the poultry. Structures are permanent in nature. Permanent structures have damaged the premises. She has shown the premises to an Engineer. She has placed on record report Mark 1 and Map Mark 2.

9. PW-2 Jagmohan Suri has also led his evidence by filing affidavit. It is averred in the affidavit that he has gone to the shop in the month of December 2001. Tenant was constructing water tank and partition wall. It was on the verge of completion. He has also raised two platforms.

10. PW-3 R.P. Swami has also led his evidence by filing affidavit. According to the averments made in the affidavit, he has retired in 1994 as Junior Engineer from Irrigation & Public Health Department. He has done civil engineering diploma from Sundernagar in the year 1962. He has got many buildings constructed in his tenure. He has inspected the shop on 2.1.2005. He has proved report Ext P2 and site plan Ext P3. He has also averred that the value and utility of the building was impaired by the construction raised by the tenant.

11. PW-4 Om Parkash Sahni has also corroborated the statement of PW-1 Smt. Padma Sahni about the manner in which tenant has partitioned the shop, constructed water tank and has also inserted holes in the walls.

12. Tenant has appeared as RW-1. He has also placed on record photographs. It is averred in the affidavit that the shop was already partitioned into two parts. He has not done any alteration or addition. He has not caused damage to the shop. He has not constructed any water tank. In his cross-examination, he has admitted that the shop is 20 feet in length and 10 feet in width. He has admitted that he has constructed shelves made of bricks, cement and granite inside the shop without the consent of the landlady. He has also hanged one weighing scale with the walls. He admitted that he has inserted a bolt of 4 inches inside the wall and the hook with which the weighing scale was hanging. He further admitted that he has made hole in the roof of the shop and exposed the iron bars of lintel for hanging the goat. He has constructed shelves inside the shop made of marble. He has also inserted one iron pipe in the wall.

13. RW-2 Nand Lal deposed that he used to purchase meat from the tenant. However, in his cross-examination, he testified that he was a vegetarian. He admitted that the partition wall was raised from the floor upto lintel, however, it was not plastered.

14. RW-3 Bhag Singh deposed that he used to purchase meat from the petitioner. He has also admitted that the partition wall was touching lintel though it was not plastered.

15. Premises were visited by PW-3 RP Swami. He prepared map Ext. P3. As per the report, cages were kept inside the shop. These are welded with the shutter. He has also made minutest details of the additions carried out inside the shop like construction of water tank and construction of platforms. Landlady has duly proved that the partition was constructed by the tenant after the premises were rented to him. Tenant has made holes in the wall. He has also exposed iron bars of lintel in order to hang weighing scale. Tenant has categorically admitted that he has made additions and alterations without the consent of the landlady. Nature of the construction raised by the tenant is permanent and these are not removable. In the event of permanent structures being removed, it is bound to damage the premises. Construction of permanent structures inside the shop has definitely impaired the value and utility of the premises. Construction raised by the tenant can not be termed as temporary additions and alterations. Construction raised by the petitioner has substantially changed the character, form and structure of the building. Permanent construction is bound to make changes in the premises on permanent basis. Damage by inserting iron rods

would be caused to walls. Partition is by brick wall and it is upto the lintel.

16. There is neither any illegality nor perversity in the Judgment passed by the appellate authority below as well as the order passed by the Rent Controller.

17. Accordingly, there is no merit in the present petition and the same is dismissed. Pending applications, if any, are disposed of. However, in the interests of justice, tenant is directed to vacate the premises within a period of three months from the date of this judgment and to pay use and occupation charges to the landlady, within a period of same period.

(Rajiv Sharma)
Judge

August 31, 2016
vikrant