

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Revision No. 100 of 2014.

Reserved on : 9th October, 2017.

Decided on : 31st October, 2017.

Sanjeev Sood (Bhagra) **.....Petitioner/tenant.**

Versus

Raj Kumar Sood & others **..Respondents/landlords.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioners : Mr. Ajay Kumar, Senior Advocate with Mr. Dheeraj K. Vashist, Advocate.

For the Respondent: Mr. Ashok Sood, Advocate.

Sureshwar Thakur, Judge

Under concurrently recorded verdicts, both the learned Courts below, ordered for the eviction of the tenant/petitioner herein from the demised premises.

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

...2...

However, the learned Appellate Authority set aside the condition imposed by the learned Rent Controller, of, the order of eviction being executed only upon requisite approval(s) being meted vis-a-vis the apposite building plan(s). The tenants/petitioners herein being aggrieved therefrom, hence for begetting their reversal have instituted the instant Civil Revision Petition before this Court.

2. Briefly stated the facts of the case are that the landlord/respondent herein filed an application under Section 14 of the H.P. Urban Rent Control Act, 1987 (hereinafter referred as the Act), for eviction of the tenant/petitioner herein, on his being tenant in the ground floor of the three storeyed building bearing building No.41/1, situated in Lower Bazar, Shimla, wherein, he is running a shop, on the grounds of the building being unsafe and unfit for human habitation as well as the bonafide requirement of the landlord for

...3...

rebuilding and reconstructing the demised premises. It has been pleaded that the building is more than 100 years old and it has virtually outlived its life span. On account of its age, foundation of the building has settled down. The building is situated in the heart of the town. Owing to its present condition, the petitioners intend to raise a RCC structure in place of the present one with modern technique to exploit its economic potentiality. The proposed reconstruction cannot be carried out without vacation of the building.

3. The petitioner herein/tenant contested the petition and filed reply thereto, wherein, he had taken preliminary objection qua maintainability, malafide, locus standi, non joinder of necessary parties and estoppel etc. On merits, it is denied that the building is in dilapidated condition or is an old one. It is also denied that the building is required bonafide by the landlords for rebuilding and reconstruction. On the other hand, it is

...4...

pleaded that the building in question is situated in the core area of the town and that no construction could be undertaken therein without prior permission of the government of Himachal Pradesh. No requisite permission is pleaded to have been obtained by the petitioner. Furthermore, the land underneath the building is owned by the State of H.P. and in the absence of the necessary consent of State of Himachal Pradesh, petitioners are not entitled to demolish the present structure and reconstruct a new building.

4. The landlords/respondents herein filed rejoinder to the reply of the tenant/petitioner herein, wherein, they denied the contents of the reply and re-affirmed and re-asserted the averments, made in the petition.

5. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

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1. Whether the building housing the demised premise has become unsafe and unfit for human habitation, as alleged?OPP
2. Whether the building housing the demised premises is bonafide required by the petitioners for rebuilding/reconstruction which cannot be carried out without the building being vacated, as alleged? OPP.
3. Whether the petitioners have no locus standi to file the present petition, as alleged?OPR.
4. Whether the petition is not maintainable, as alleged?OPR.
5. Whether the petition is bad for non joinder of necessary parties in the absence of State of H.P., as alleged? OPR.
6. Whether the petitioners are estopped by their own acts and conducts from filing the petition, as alleged?OPR.
7. Relief.

6. On an appraisal of evidence, adduced before the learned Rent Controller, the learned Rent Controller partly allowed the petition of the landlord/respondent herein. In an appeal, preferred therefrom by the tenants/petitioners herein before the learned Appellate

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Authority, the Appellate Authority dismissed the appeal and modified the order(s) recorded by the learned Rent Controller.

7. Now the tenant/petitioner herein has instituted the instant Civil Revision Petition before this Court for hence assailing the findings recorded in its impugned order by the learned Appellate Authority.

8. The learned Rent Controller had ordered, for, the eviction of the tenant from the demised premise(s), on count, of it being cogently proven of their(s) being bonafide required by the landlords, for rebuilding and reconstruction of the building wherein, it stands housed, reconstruction activity whereof, being not possible unless the entire building is vacated. The learned Rent Controller had, however, returned disaffirmative finding upon the issue appertaining to the demised premises being unsafe and unfit for human habitation. The findings rendered by the learned Rent Controller upon the

...7...

aforesaid issue, stood not, assailed by the landlords, by theirs carrying an appeal therefrom before the learned Appellate Authority, thereupon, the findings rendered thereon acquire conclusivity. The tenants being aggrieved by the affirmative findings returned by the learned Rent Controller, upon the issue, appertaining to the demised premises, being bonafide required by the landlords, for the apt rebuilding and reconstruction activity(ies), hence, carried an appeal therefrom before the learned Appellate Authority. The learned Appellate Authority dismissed the appeal, however, it set side the condition imposed by the learned Rent Controller qua the order of eviction of the tenant from the demised premises, holding binding operative clout, only upon, necessary sanction(s) or approvals being meted by the competent authorities concerned vis-a-vis the landlords. Though, yet the tenant is aggrieved therefrom, hence, has instituted the instant civil revision before this Court.

...8...

9. The learned counsel appearing for the tenant/petitioner herein has vehemently argued before this Court that the imposition of a precondition by the learned Rent Controller for thereupon the order of eviction taking operative binding force, condition precedent whereof is comprised in relevant sanctions being meted vis-a-vis the building in portion whereof the demised premises exist, being both valid also just, whereas, setting aside thereof by the learned Appellate Authority being in discordance with (i) the existing location of the building in a part whereof the demised premises exist, within, the limits of the Municipal Corporation, Shimla; (ii) occurrence therein, enjoin play of all the mandatory statutory provisions, appertaining to meteing of statutory sanction(s) vis-a-vis the building plans, with proposals therein, for rebuilding and reconstruction of the relevant building, (iv) thereupon, the imposition of a condition precedent, for hence the

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order of eviction taking conclusive binding force, condition whereof is comprised in the apposite sanction being meted vis-a-vis the relevant building by the Municipal Corporation, Shimla, being both lawful as well as valid.

10. Undisputedly, the building in portion whereof, the demised premises exist, is located in a core area. The contention of the counsel, for the petitioner herein/tenant, that given the relevant building being located in a core area, whereat there being a complete interdiction against approval(s) being meted vis-a-vis rebuilding(s) and reconstruction(s) of the relevant building, thereupon, the ground reared by the landlords, of, theirs bonafide requiring "it" for rebuilding and reconstructing it, renders it to beget a stain of malafides, hence, this Court being constrained to render dis-affirmative finding(s) upon the aforesaid issue. However, the aforesaid submission warrants rejection, as it stands

...10...

propounded by this Court in a judgment recorded in ***Naresh Kumar and others versus Surinder Paul, 2001(2) Shim.L.C. 337***, that the mere location of the apposite building in a core area not per se dis-entitling the landlord, to seek eviction of the tenant holding occupation in a part thereof, especially when even in core areas, approval(s) for holding reconstruction or rebuilding activities, “can be” granted by the State Government. Since, the site plan is pending for approval before the authorities concerned also when the State Government may grant approval to the apposite plan submitted by the landlord, thereupon, it would be unbecoming to conclude that merely given the apposite building existing in a core area, thereupon, the site plan submitted by the landlords, to the authorities concerned, ipso facto suffering the ill-fate of its rejection, not, per se holding any strength, nor therefrom any inference being derivable, that per se thereupon the petition for eviction hence standing

stained with a vice of malafide(s). Since, the relevant building is evidently located within the jurisdiction of Municipal Corporation, Shimla, thereupon with a statutory obligation standing entailed upon the landlords, "to" prior to his holding it, to reconstruction or rebuilding activity(ies), his receiving consent in respect thereto "from" the appropriate government, whereas, with the apposite building plan, still awaiting sanction being purveyed thereon, by the authorities concerned, thereupon till the authorities concerned purvey/mete sanction upon the relevant building plan, the concurrently recorded verdicts may not be put to execution.

11. The learned Appellate Authority has misled itself in erroneously concluding, that, the meteing(s), of apposite sanctions by the authorities concerned, being not statutorily imperative, for rendering the order of eviction, to take full effective finding force, fallacious misconstruction whereof ensues, from the learned

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Appellate Authority remaining oblivious, to the fact of the relevant building existing, in a core area, whereat also sanctions are purveyable also its remaining unmindful to the operation of statutory provisions, qua the location of the apt building, whereby the landlords are statutorily enjoined, to before proceeding to carry rebuilding activity(ies), obtain sanction(s), from the competent authorities concerned. The learned Appellate Authority has further mislead itself, to, fallaciously construe, that non meteing(s) of apposite approvals also not engendering any inference of no bonafide(s) inhering in the landlords, for theirs seeking eviction of the tenant, on the ground of the relevant building being hence bonafide required for rebuilding and reconstruction activity(ies). More so, when unless the relevant building approvals stand meted by the competent authorities, the reconstruction(s) and rebuilding(s) of the building concerned, in part whereof, the demised premises occur,

...13...

would not obviously take effect, whereupon, (i) the natural effect, would be, of, the landlord(s) contriving specious and spurious ground, for seeking eviction of the tenant, on the purported ground of his bonafide requiring the building, in portion whereof the tenant is residing, for his carrying out rebuilding and reconstruction activity(ies), (ii) importantly when for the aforesaid ground to carry traits of bonafides, the meteing(s) of statutory approval(s) by the authorities concerned, was peremptory.

12. Furthermore, the tenants/petitioners, if they nowat evidently hold possession of the demised premises they in accordance with law also within the permissible ambit of the decisions of this Court reported in ***Jaswinder Singh and another versus Kedar Nath and another, Latest HLJ (2012) (HP) 1452 and Chaman Lal Bali versus State of H.P. and another, ILR 2016 (HP) 1450***, “shall” upon the relevant building

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being reconstructed/rebuilt, be entitled to re-induction therein in an area equivalent to the area of the nowat demised premises.

13. The above discussion unfolds qua the conclusions arrived by both the learned Courts below with respect to the imperativeness, of, eviction of the tenant/petitioner from the demised premises, on count of bonafide requirement of the landlord of the building, in part whereof, the demised premises exist, to rebuild it, being based upon a proper and mature appreciation of evidence on record. While rendering the apposite findings, both the learned Courts below have not excluded germane and apposite material from consideration. However, the verdict rendered by the learned Appellate Authority, whereby it set aside the apt condition precedent imposed by the learned Rent Controller, for hence the eviction order to take force, is as aforestated thereupon modified.

...15...

14. In view of above discussion, the present petition is dismissed and the eviction of the petitioner/tenant from the demised premises on the ground of the building being bonafidely required by the landlords for its rebuilding and reconstruction, is affirmed, yet subject to the condition that the petitioner/tenant shall be evicted from the demised premises only upon production of necessary statutory sanctions/approvals granted by the competent authorities concerned. All pending applications also stand disposed of. No order as to costs.

31st October, 2017.
(jai)

(Sureshwar Thakur)
Judge.