

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

C.R No. 187 of 2016

Reserved on: 26.6.2018

Decided on: 29.6.2018.

M/S Bindal Engineering WorksPetitioner.
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Versus

Som NathRespondent.
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Coram:

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

Whether approved for reporting?¹ Yes.

For the Petitioner:	Mr. P.P Chauhan, Advocate.
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For the Respondent(s):	Mr. Satyan Vaidya, Sr. Advocate with Mr. M.P Kanwar, Advocate.
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Sureshwar Thakur, J

The learned Rent Controller-1, Kasauli, District Solan, H.P., pronounced, an affirmative order, upon, an application cast before him, by the petitioner herein, under the provisions of Section 11, of, the H.P Urban Rent Control Act, with a prayer therein, for the non-applicant/respondent, being directed, to restore the

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

electricity connection, in the rented premises. The respondent being aggrieved therefrom, hence preferred, an appeal before the learned Appellate Authority-iii, Solan, District Solan, H.P., whereupon the latter Court, after allowing the landlord's appeal, hence, declined relief to the tenant, hence, the instant petition before this Court.

2. The petitioner/tenant would be entitled, to obtain an affirmative direction, upon, his application, cast under the provisions of Section 11 of the H.P Urban Rent Control Act, 1987, provisions whereof, are, extracted hereinafter, only upon his prima-facie establishing, by adducing cogent material, displaying qua his being a tenant, under his landlord, in, the relevant premises.

‘11. Cutting off or withholding essential supply or service-

(1) No landlord either himself or through any person purporting to act on his behalf shall, without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the building or rented land let out to him.

(2) If a landlord contravenes the provisions of sub-section (1), the tenant may make an application to the controller complaining of such contravention.

(3) If the controller is satisfied that the essential supply or service was cut off or withheld by the landlord with a view to compelling the tenant to vacate the premises or to pay an

enhanced rent, the Controller may pass an order directing the landlord to restore the amenities immediately pending the inquiry referred to in sub-section(4).

Explanation-An interim order may be passed under this sub-section without giving notice to the landlord.

(4) If the Controller, on inquiry, finds that the essential supply or service enjoyed by the tenant in respect of the building or rented land was cut off or withheld by the landlord without just and sufficient cause he shall make an order directing the landlord to restore such supply or service.

(5) The Controller may, in his discretion, direct that compensation, not exceeding one hundred rupees,-

(a) be paid to the landlord by the tenant, if the application under subsection (2) was made frivolously or vexatiously:-

(b) be paid to the tenant by the landlord, if the landlord had cut off or withheld the supply or service without, just and sufficient cause.

Explanation-1 In this section, “essential supply or service” includes supply of water, electricity, lights in passages and on staircases, conservancy and sanitary service.

Explanation-II For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority.”

3. The definition of, a, tenant, as, borne in Section 2, of the H.P Urban Rent Control Act, 1987, is extracted hereinafter, upon reading(s) whereof, it is concludable, qua,

a person claiming tenancy, vis-a-vis, any premises, his being enjoined to prove qua his paying rent qua his landlord. Consequently, it was also imperative, for the petitioner, to, prima-facie, prove qua his tendering or liquidating rent either to one Malkiat Singh or to the respondent herein.

“Tenant means any person by whom or on whose account rent is payable for a residential or non-residential building or rented land and includes a tenant continuing in possession after termination of the tenancy, a deserted wife or a tenant who has been or is entitled to be in occupation of the matrimonial home or tenanted premises of husband, a divorced wife of tenant who has a decree of divorce in which the right of residence in the matrimonial home or tenanted premises has been incorporated as one of the condition of the decree of divorce and in event of the death of such person such of his heirs as are mentioned in Schedule-I to this Act and who were ordinarily residing with him or carrying on business in the premises at the time of his death, subject to the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land bits tenant, except with the written consent of the landlord or a person to whom the collection of rent or fees in a public market cart stand or slaughter house or of rents for shops has been farmed out or leased by the Municipal Corporation or a

Municipal Council or a Nagar Panchayat, or a Cantonment Board.”

4. The learned Rent Controller recorded, an, affirmative verdict, upon, the apposite application, on the solitary score, of, the petitioner holding possession, upon, a part of the relevant plot. However, apart therefrom, he has visibly rather omitted to record any findings, vis-a-vis, the trite factum of the petitioner herein, being a tenant, vis-a-vis, the relevant plot, tenancy whereof, being, concludable, to, arise only upon his further establishing, the trite factum, of, his paying rent, to, the respondent, or, to one Malkiyat Singh (i) Even the aforesaid finding, was, grooved merely upon the petitioner contending, of, in the year 1984, the predecessor-in-interest of one Malkiyat Singh rather letting out the premises, to, his predecessor-in-interest. Consequently, the aggrieved hence preferred an appeal, before the learned Appellate Authority, and, the learned Appellate Authority, recorded findings, in dis-concurrence, with, the verdict recorded by the learned Rent Controller.

5. The learned counsel for the petitioner, has contended, with, vigor qua with the learned Appellate

Authority, in paragraph 14, of, its verdict, paragraph whereof, is extracted hereinafter, hence making a conclusion, of, the learned Rent Controller concerned, though failing to determine, the, trite factum of (a) existence, of, a validly constituted relationship, of, a landlord, and, tenant, inter-se Malkiyat Singh or the respondent, vis-a-vis, the applicant, (b) and his also omitting, to, make the relevant inquiry, (c) thereupon it was befitting, for the learned Appellate Authority, to, make an order of remand, vis-a-vis, the learned Rent Controller concerned, for, enabling the latter, to, make, an apt decision, whereas his apt failings, rather his proceeding, to, delve into the merits of the case, has, sequelled gross miscarriage of justice.

“14. The intention of the legislature is to provide quick relief to the tenant if an essential supply or service is cut off or withheld without sufficient cause by the landlord. But it is to be remembered that the relief contemplated under the said provision is to be granted only to a tenant as defined under the Act. Hence before granting the interim relief the Court must be satisfied, prima facie not only that the essential supply or service has been cut off without sufficient cause but also that the applicant is a tenant

as defined under the Act. In the present case, before passing the order, the Court issued notices to the respondent and the respondent has disputed this fact that petitioner is a tenant of Malkiyat Singh or the respondent, therefore, it was obligatory on the part of the Rent Controller to enquire this fact whether relationship of landlord or tenant exist between the parties or not.”

6. However, for the reasons’, to be assigned hereinafter, the aforesaid contention of the learned counsel, for the petitioner, is, rudderless given (a) with the learned Appellate Authority, though, delving into the entire material, existing on record, also, its bearing in mind, the trite factum, of, essentiality of the petitioner rather establishing the trite rubric qua evident existence, of, a validly constituted relationship, of, landlord, and, tenant inter-se one Malkiyat Singh, and, the respondent, vis-a-vis, the petitioner, (b) AND, on his delving into therewith apt material, his also dispelling the vigor, of the reasons’ assigned by the learned Rent Controller, availed solitarily, upon, the petitioner purportedly, holding possession, on, a part of the plot, rather, is, neither an inapposite endeavor, nor, is stained with any vices of illegality or impropriety, (c)

thereupon, it was reiteratedly apt for the learned Appellate Authority, to, delve, into the merits of the case, de hors the aforesaid stray pronouncement, borne in paragraph 14 supra, and, also with apt therewith material being available on record, for enabling it, to, therefrom therefrom gauge, and, fathom qua, there, existing a validly constituted relationship, of landlord and tenant, inter-se one Malkiyat Singh, and, the respondent herein, vis-a-vis, the petitioner herein, and, thereafter, hence to make both valid, and, befitting conclusions, as, find occurrence in the impugned verdict.

7. The relevant material, as, alluded, to, by the learned Appellate Authority, is, comprised, in a forged rent agreement, drawn, on 30.7.2014, and, as, purportedly executed inter-se Malkiyat Singh, and, the petitioner, (a) however, for want of placing on record, the, apposite rent receipts, and, (b) theirs making an apt display, of, the petitioner tendering rent, to Malkiyat Singh, rather constrained it, to, conclude, of there existing no validly constituted relationship of landlord, and, tenant inter-se,

one Malkiyat Singh, and, the petitioner. Contrarily, the learned Rent Controller, had merely on anvil, of, a, letter dated 17.4.2016, scribed by Malkiyat Singh, and, his averring therein, the misuser of electricity, by the respondent, had hence concluded, of, there coming into being, a, relationship of tenant, inter-se, the petitioner, and, one Malkiyat Singh,(c) besides assumingly, even if the FIR registered, at the instance of Malkiyat Singh, was merely an endeavor to, falsely implicate the petitioner, also, if the letter of 17.4.2016, may be construable, qua thereunder hence tenancy being created, inter-se Malkiat Singh, and, the petitioner, and, also inter-se the petitioner, and, one Somnath, the respondent herein, yet creation of any tenancy(s) thereunder, was enjoined to be proven strictly, in consonance, with the apposite clause V(a), of Clause 2, whereas, with the apt condition precedent borne therein, vis-a-vis, the lessee, being dis-empowered to sell transfer, assign or otherwise part, with the possession qua the whole or any of the industrial plot, except, with the previous apposite permission, being granted, by the authority

concerned, AND (i) since compliance therewith, stood not meted, hence, the bar constituted thereunder, is squarely attracted, against, both the lessee, and, against the petitioner, (ii) thereupon even if assumingly, the purported possession, of the petitioner, is construable, to be in his capacity, of, a sub lessee, under, the apposite lessees, yet, with the aforesaid capacity, of, the petitioner's, purportedly holding possession, of, any part, of, the relevant premises, cannot yet don color, of, any validly constituted apt statutory relationship, (iii) whereas, for the petitioner being construable, to be tenant, under, one Malkiyat Singh, and, Under Som Nath, enjoined surfacings, of evidence qua a validly constituted relationship, of, tenant and landlord, erupting inter-se them. Consequently, for the reasons, afore-stated, any invalid purported relationship, of, landlord, and, tenant inter-se the petitioner, vis-a-vis, one Malkiyat Singh, and, Som Nath, cannot, be construed to be empowering, the, petitioner, to, either claim qua his being tenant, in the relevant premises, (iv) nor he can claim, the, apposite relief, given affordings thereof, vis-a-vis him,

necessarily requiring his establishing qua his being a tenant, under, his purported landlord(s).

8. In view of above, I find no merit in this petition, and, the same is accordingly dismissed, and, the impugned order is maintained and affirmed. Records be sent back. All pending applications stand disposed of accordingly.

29th June, 2018
(priti)

(**Sureshwar Thakur**),
Judge.