

A

VIPIN KUMAR

v.

ROSHAN LAL ANAND AND ORS.

MARCH 24, 1993

B

[K. RAMASWAMY AND R.M. SAHAI, JJ.]

*East Punjab Urban Rent Restriction Act, 1949: Sections 13(2) & 13(3).*

C

*Tenant—Impairing the value or utility of building—Eviction on the ground of—Inferential facts as to impairment should be deduced from proved facts—Concurrent findings of impairment—Interference by Supreme Court held not justified.*

D

*Constitution of India 1950: Article 136—Appeal—Concurrent findings of fact—Power of Supreme Court to interfere with.*

E

Section 13(2)(iii) of the East Punjab Urban Rent Restriction Act, 1949 provides that if a tenant has committed such acts as are likely to impair materially the value of utility of the building or rental land the Rent Controller may make an order evicting the tenant. A decree of eviction was passed against the appellant-tenant under this provision. The finding recorded by the Rent Controller was that he had constructed a wall in the varandah of the demised premises and put up a door without permission of the landlord as a result of which the flow of light and air had been stopped and consequently the value of the demised shop had been impaired and utility of the building was impaired. The decree of Rent Controller was confirmed by the Appellate Authority as well as by the High Court.

F

G

In appeal to this Court it was contended on behalf of the appellant that Section 13(2) gave discretion to the Rent Controller to order eviction while in the cases covered under Section 13(3) it was made mandatory to direct eviction of the tenant. Therefore, the Rent Controller had to independently consider and exercise discretion vested in him keeping in view the proved facts to decree ejection. It was, for the landlord under the circumstances to prove such facts which warranted the Controller to order eviction in his favour and since he had not proved such facts, the Court had committed illegality in granting the decree of ejection.

H

Dismissing the appeal, this Court,

HELD: 1. If the tenant had committed such acts as are likely to impair materially the value or utility of the building, he is liable to ejection. The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. [643 A-C]

2. By constructing the wall, whether the value or utility of the building has materially been impaired is an inferential fact to be deduced from proved facts. In the instant case, the proved facts are that the appellant had constructed the wall and put up a door therein without the consent of the landlord. Consequently, the flow of the air and light has been stopped. He removed the fixtures. From these facts it was inferred that the value or utility of the building has been materially affected. Therefore, it is a finding of fact of which the Court cannot evaluate the evidence and upset that finding. [643 D-E, 642 E]

3. Undoubtedly the statute, on proof of facts, gives discretion to the Court, by Section 13(2) and made mandatory in cases covered by Section 13(3), to order eviction. In a given set of facts the Rent Controller, despite finding that the tenant committed such acts which may impair the value or utility of the building yet may refuse to grant the relief of eviction. It is for the tenant to plead and prove that the circumstances are such as may warrant eviction and then the burden shifts on to the landlord to rebut these facts or circumstances. Then the Rent Controller is to weigh *pros and cons* and exercise the discretion. No such attempt was made by the appellant. So no fault can be laid at the Rent Controller's failure to exercise the discretion. [643 G-H, 644 A-B]

*Om Parkash v. Amar Singh & Anr.*, A.I.R. 1987 S.C. 617, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3271 of 1984.

From the Judgment and Order dated 18.7.84 of the Punjab & Haryana High Court in C.R.No.1125 of 1984.

Prem Malhotra and S.K. Gautam for the Appellant.

M.L. Verma and Mrs. S.K. Bagga for the Respondents.

A The following Order of the Court was delivered:

This appeal by Special Leave arises against the order of the Punjab and Haryana High Court in Civil Revision No.1125 of 1984 dated July 18, 1984 confirming the decree of eviction passed by the Rent Controller and confirmed by the Appellate Authority under the provisions of the East Punjab Urban Rent Restriction Act, 1949 for short 'the Act'. The ground for eviction ultimately upheld by the Courts below was that the appellant had constructed a wall in the varandah of the demised premises and put up a door which materially impaired the value or utility of the building. Shri Prem Malhotra, learned counsel for the appellant contended that the appellant had not constructed the offending construction. Even if it is so there is no proof adduced by the landlord that by such a construction the value or utility of the building had materially impaired. As such the decree of eviction is clearly illegal. In support thereof he placed reliance on a judgment of this court reported in *Om Prakash v. Amar Singh & Anr.*, A.I.R. 1987 SC 617.

D The question, therefore, is whether the finding of Courts below concurrently found that the appellant had constructed a wall in the varandah which materially effected the value or utility of the shop is vitiated by law. The building consists of two shops and the appellant was inducted into one such shop. He constructed the wall in the varandah and put up the door. Therefore, it is a finding of fact which we cannot evaluate the evidence and upset that finding. It was also found that the wall was constructed without the permission of the landlord. Due to construction the value or utility of the building have been materially affected. Section 13(2)(iii) provides thus:-

F "A tenant in possession of a building of rented land shall not be evicted therefrom in an execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section (or) in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947 as subsequently ammended)".

H Clause 3 of sub-section (2) of Section 13 provides that "if the tenant has committed such acts as are likely to impair materially the value or utility

of the building or rented land", the Rent Controller may make an order directing the tenant to put the landlord in possession of the building or rented land. If the Controller is not so satisfied, he shall make an order rejecting the application. It is, therefore, clear that if the tenant had committed such acts as are likely to impair materially the value or utility of the building, he is liable to ejection. The finding recorded by the Controller is that on account of the construction of the wall and putting up a door the flow of light and air had been stopped. He removed the fixtures. So the value of the demised shop has been impaired and utility of the building also is impaired. The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of Clause 3 of sub-section (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb is of the utility or value of the building has been materially impaired. The acts of the tenant must be such that by erecting the wall had materially impaired the value or utility of the demised premises. It is contended by Mr. Prem Malhotra that the landlord should prove as to how it is materially effected and that there is no evidence adduced by the landlord. We find no force in the contention. By constructing the wall, whether the value or utility of the building has materially been impaired is an inferential fact to be deduced from proved facts. The proved facts are that the appellant without the consent of the landlord had constructed the wall and put up a door therein as found of the Rent Controller, the flow of air and light has been stopped. He removed the fixtures. From these facts it was inferred that the value or utility of the building has been materially effected. It is then contended that sub-section (2) of Section 13 gives discretion to the Rent Controller to order eviction while the cases covered under Sub-section (3) of Section 13 it is made mandatory to direct eviction of the tenant. Therefore, the Rent Controller has to independently consider and exercise discretion vested in him keeping in view the proved facts to decree ejection. It is for the landlord under the circumstances to prove such facts which warrant the Controller to order eviction in his favour. The landlord had not proved such facts in his favour. Therefore, the Court had committed illegality in granting the decree of ejection. We find no force in the contention. Undoubtedly the statute, on proof of facts, gives discretion to the court, by Sec. 13(2) and made mandatory in case covered by Sec. 13(3), to order eviction. In a given set of facts the Rent Controller, despite finding that the tenant committed such acts which may impair the value or

A

B

C

D

E

F

G

H

- A utility of the building yet may refuse grant the relief of eviction. It is for the tenant to plead and prove that the circumstances are such as may not warrant eviction and then the burden shifts on to the landlord to rebut those facts or circumstances. Then the Rent Controller is to weigh *pros and cons* and exercise the discretion. No such attempt was made by the appellant.
- B So no fault can be laid at the Rent Controller's failure to exercise the discretion. In *Om Prakash's* case the words "materially altered" under section 14(c) of the U.P. Cantonments (Control of Rent and Eviction) Act, 1952, came up for consideration. This court held that the nature and character of change or alteration of the building must be of an essential and important nature. In determining the question the court must address
- C itself to the nature, character of the constructions and the extent to which they make changes in the front and structure of the accommodation, having regard to the purpose for which the accommodation may have been let out to the tenant. In considering that language it was held that putting up a door to the varandah is not a material alteration. The ratio thus renders
- D little assistance to the facts of the case.

- In view of the facts and circumstanced of the case the appellant may remain in possession for one year and shall vacate the premises on or before April 1, 1994 subject to the condition that the appellant should pay Rs.200 per month from April, 1993 till date of eviction. He should file
- E undertaking in the Registry of this Court within a period of six weeks with usual conditions. The appeal is accordingly dismissed but in the circumstances without costs.

T.N.A.

Appeal dismissed.