



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No. 155 of 2019

Date of Decision: March 21, 2023

Rattan Chand

...Petitioner/Tenant.

Versus

Madhu Bharat Chadha & another

..Respondents/Landlords.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner: Mr.Divya Raj Singh, Advocate.

For the Respondents: Mr.Janesh Gupta, Advocate.

Vivek Singh Thakur, J.

Petitioner-tenant has filed this Civil Revision under Section 24(5) of Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as 'Rent Act') against the judgment dated 01.11.2019, passed by the Appellate Authority, Chamba Division, Chamba, H.P., in Rent Appeal No.1 of 2019, titled as *Rattan Chand vs. Madhu Bharat Chadha & another*, whereby order dated 22.06.2019, passed by the Rent Controller, Dalhousie, District Chamba, H.P., in Rent Case No.10 of 2013, titled as *Madhu Bharat Chadha & another vs. Rattan Chand*, has been affirmed.

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

2. For convenience petitioner and respondents shall be referred hereinafter according to their status in the Rent Petition, i.e. tenant and landlords respectively

3. Learned counsel for the tenant has submitted that Rent Petition was filed for eviction of tenant on the ground of arrears of rent, bonafide requirement, rebuilding purpose and that tenant had ceased to occupy the building for last 12 months preceding to filing of the petition. It has further been contended that landlords have failed to prove that building is in dilapidated condition so as warranting rebuilding, and for bonafide requirement and also that tenant has ceased to occupy the premises for last preceding 12 months from the date of filing of the petition and, therefore, it has been submitted that both the Courts have committed irregularity and material illegality resulting into perversity in the judgment warranting interference of this Court under revisional jurisdiction. In alternative, it has been contended that in case tenant is considered to be liable to vacate the premises, in reference, then direction, to complete reconstruction in time bound manner with right of re-entry to the tenant within the reasonable period, deserves to be issued to the landlords.

4. Learned counsel for the landlords has submitted that banafide of the landlords is evident from the fact that they have applied for reconstruction permission/sanction of the Plan and they intend to utilize their property for more beneficial use and for which condition of the building is immaterial and further that

no doubt, tenant has deposited the amount of arrears of rent, in terms of order passed by the Rent Controller, but he is not paying use and occupation charges since passing of the order of eviction till date and is occupying the premises in question despite having constructed his own house at Banikhet, and he is making casual visits in the premises in reference and is occupying it without paying single penny and, therefore, it has been claimed that apart from dismissing the petition, direction also deserves to be issued against the tenant to pay use and occupation charges @ ₹10,000/- per month because the property in question is located in the heart of Dalhousie Town, where landlords are being deprived from optimum utilization of their property.

5. After considering the material on record that premises in question is situated in commercial locality having Hotels in its surrounding which have been constructed with modern designs and amenities and there is definite possibility of fetching more profit by the owner after reconstruction/rebuilding of the premises in question and for reconstruction landlords had also submitted application for permission to rebuild as well as Map for sanction/approval in May 2012, and landlords intend to rebuild the structure for better economic advantage and to yield better revenue, Rent Controller has allowed the eviction petition on the grounds that tenant was in arrears of rent to the tune of ₹37,106/- and building was required by the landlords for reconstruction, with rider that in case of deposit of arrears of rent

within the period of one month from the date of order, tenant shall not be evicted on the ground of arrears of rent, and further that, after reconstruction of building, tenant shall have right to re-entry to the premises in an area equivalent to the original premises being occupied by him as a tenant.

6. Both landlords and tenant had assailed the order. Landlords had assailed the order on limited point of assessment of arrears of rent and also on the ground that eviction order was not passed on one more ground that tenant had ceased to occupy premises since more than 12 months immediately before filing of Rent Petition as tenant had permanently shifted to his own constructed house at Banikhet. Tenant had assailed his eviction order being not based on proper appreciation of evidence on record alleging that landlords had failed to prove its case by leading cogent, reliable and convincing evidence. Both appeals/cross objections, have been dismissed by Appellate Authority vide impugned judgment.

7. Supreme Court in *Rukmini Amma Saradamma vs. Kallyani Sulochana and others*, reported in (1993) 1 SCC 499, referring its earlier pronouncement in *Rai Chand Jain vs. Chandra Kanta Khosla*, (1991) 1 SCC 422, with respect to scope of revisional power under Section 20 of Kerala Rent Control Act, which is similar to H.P. Rent Act, has observed that notwithstanding the fact that Section 20 of the Act conferring revisional jurisdiction of the High Court is widely worded, such a jurisdiction cannot be converted into an appellate jurisdiction.

8. With respect to scope of jurisdiction and revisional jurisdiction and the extent of power which High Court can exercise in a Revision filed under Section 24(5) of the Rent Act, Five Judges' Constitution Bench of Supreme Court in *Hindustan Petroleum Corporation Limited vs. Dilbahar Singh, (2014) 9 SCC 78*, has observed as under:-

"28. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the 'appellate jurisdiction' and 'revisional jurisdiction' is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice-versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves re-hearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the tribunal/appellate authority, the decision of the revisional court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.

29. With the above general observations, we shall now endeavour to determine the extent, scope, ambit and meaning of the terms "legality or propriety", "regularity, correctness, legality or propriety" and "legality, regularity or propriety" which are used in three Rent Control Acts under consideration.

29.1. The ordinary meaning of the word 'legality' is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal.

29.2. The term 'propriety' means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition conformity with requirement; rules or principle, rightness, correctness, justness, accuracy.

29.3. The terms 'correctness' and 'propriety' ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, 'correctness' is compounded of 'legality' and 'propriety' and that which is legal and proper is 'correct'.

29.4. The expression "regularity" with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play.

30. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided expressly. None of these statutes confers on revisional authority the power as wide as that of appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the Trial Court/Rent Controller and Appellate Court/Appellate Authority for re-hearing of the issues raised in the original proceedings.

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High

Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

9. Present Revision Petition is to be decided keeping in view the aforesaid exposition of law with respect to scope of revisional jurisdiction of this Court.

10. It is settled law that landlords have right to put their property for better use and to obtain higher income and for that purpose reconstruction/rebuilding of the property is covered under bonafide requirement of the landlords and in such eventuality location of the property, possible potential for utilization of the property and capacity of landlords to rebuild the premises and financial resources etc. may be relevant, but in

case other parameters required to prove bonafide requirement of the landlords are established on record then dilapidated condition of the building may not be necessary to prove, and, in such eventuality, condition of the building, availability of necessary funds and sanction of Plan by the local authority may be relevant factors, but even if, building is not in dilapidated condition and Map has not been sanctioned yet, but the building is situated in a commercial location having possible potential to fetch higher income after reconstruction/rebuilding and to yield more revenue by its commercial or other use, tenants may be evicted for such bonafide requirement of the landlord.

11. I have gone through the impugned order and judgment, wherein all these issues have been considered by referring relevant case laws, and I have also gone through the record of the Rent Controller, including evidence led by the parties which has been duly and properly appreciated by the Courts below. Therefore, I do not find any illegality, irregularity or perversity in the impugned order/judgment.

12. Learned counsel for the landlords has submitted that in case tenant requires the premises in question bonafide, then he should pay use and occupation charges, determined by the Court keeping in view the location of the property in reference and, in that eventuality, landlords shall allow him to continue till sanction of the Map and approval of concerned Competent Authority for reconstruction/rebuilding and immediately after receiving the same they shall give one month's notice to the

tenant to vacate the premises and, thereafter, on vacation of premises within one month after receipt of notice, landlords shall make endeavour to reconstruct the building within 1 ½ year and in case building is put to the same use then landlords shall put the tenant in possession of equivalent premises in premises on the terms to be agreed between the parties in consonance with pronouncement of the Division Bench in *Chaman Lal Bali versus State of Himachal Pradesh*, reported in *AIR 2016 HP 168: 2016(3) Shim. LC 1593*, and as per law applicable at relevant time, but with rider that tenant shall pay arrears of use and occupation charges within one month from today and continuous regular payment thereof on or before 7th of every month till enjoying possession of the premises in reference.

13. Landlords in its reply to the application of stay have claimed that tenant is liable to pay use and occupation charges @ ₹10,000/- per month from the date of passing of the order till getting possession of the premises in reference. To substantiate claim for use and occupation charges, reliance has been placed on a judgment of Coordinate Bench in *Champeshwar Lall Sood and another vs. Gurpartap Singh and others*, reported in *Latest HLJ 2017 (HP) 589*.

14. Learned counsel for the tenant has orally contested the claim of the landlords with respect to rate of use and occupation charges @ ₹10,000/- per month. He has submitted that rent or use and occupation charges of the premises in question cannot be more than ₹2000/- per month. In absence of

any response to the claim made in the reply to the application, claim of the landlords shall be deemed to have been admitted, but considering oral opposition by the counsel and taking a lenient view, landlords are held to be entitled and tenant to be liable to pay ₹5000/- per month as use and occupation charges.

15. In the given facts and circumstances of the case, for aforesaid discussion, petition is dismissed and order passed by the Rent Controller, affirmed by the Appellate Authority, is upheld with further direction to the tenant to pay use and occupation charges @ ₹5000/- per month from the date of passing of eviction order by Rent Controller i.e. 22.06.2019 till the date of leaving the possession of premises in reference; and arrears of use and occupation charges till 31.03.2023 shall be paid/deposited by the tenant on or before 20.04.2023 and, thereafter, he shall ensure payment of use and occupation charges on or before 7th of succeeding months, failing which he shall be liable to be evicted immediately on default in payment/deposit of use and occupation charges and in case tenant vacates the premises in question on or before 20.04.2023, he shall be exempted from payment of use and occupation charges from the date of passing of eviction order till 20.04.2023.

16. So far right of re-induction or to re-entry shall be subject to and adherence to all provisions of law applicable and prevailing at relevant point of time for such re-entry including determination of fair rent or rent mutually agreed between the

parties as well as proposed user and utilization of the property by the landlords.

17. Right to re-entry of the tenant has been granted in the Act itself. However, such right shall definitely is not to be an absolute right, as the Courts have to determine the same keeping in view the given facts and circumstances of the case including the purpose for which reconstruction/rebuilding of the premises has been proposed and permitted, and also keeping in view the bonafide requirement of the landlord. In case premises after rebuilding/reconstruction is to be rented, then definitely tenants shall have right to re-entry/re-induction in the premises, in accordance with law, as recorded hereinabove. For example, if premises is ordered to be vacated for banafide requirement of the owner to utilize the premises in better way by converting the residential building into a commercial complex, in such eventuality tenant living in residential premises may not claim re-entry or re-induction in the newly constructed commercial complex for residential accommodation. Similarly, there may be a case where landlord intends to expand his business and shall have requirement of more space for commercial activity by rebuilding/reconstructing the premises. In such eventuality also, it may not be justified to impose a tenant upon him causing curtailment of his plan of extension of his business. In a given case, a building may be proposed to be reconstructed or rebuilt for own residential purpose with no proposal to let it out. in such eventuality, a tenant cannot be thrust upon the owner of the

premises by way of re-induction or re-entry in a house particularly designed and constructed in a manner that there is no scope for letting out portion thereof as existence of any other family in such premises may cause interference in privacy. Such re-entry/re-induction shall amount to depriving a person from his right of full enjoyment of his property for no fault on his part, but for the only reason that he or his predecessor had provided rented accommodation to someone in the past, as per circumstances prevailing at that time.

18. Petition is disposed of in aforesaid terms alongwith pending application(s), if any.

(Vivek Singh Thakur),
Judge.

March 21, 2023
(Purohit)

High Court