

Supreme Court of India

Amar Nath Sughan Chand vs Lal Chand Bansal on 2 March, 1994

Equivalent citations: 1994 SCC, Supl. (2) 360 JT 1994 (2) 180

Author: M M.K.

Bench: Mukherjee M.K. (J)

PETITIONER:

AMAR NATH SUGAN CHAND

Vs.

RESPONDENT:

LAL CHAND BANSAL

DATE OF JUDGMENT 02/03/1994

BENCH:

MUKHERJEE M.K. (J)

BENCH:

MUKHERJEE M.K. (J)

MOHAN, S. (J)

CITATION:

1994 SCC Supl. (2) 360 JT 1994 (2) 180

1994 SCALE (1) 845

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by M.K. MUKHERJEE, J.- The two appeals and the special leave petition have been heard together as they stem from a common judgment delivered by the +From the Judgment and Order dated 21-9-1985 of the Punjab and Haryana High Court in C.R. No. 1342 of 1985 Punjab and Haryana High Court disposing of three civil revision petitions. Facts leading to the filing of the appeals and the special leave petition are as under.

2. One Lal Chand Bansal (now dead and represented by his legal representatives), hereinafter referred to as the 'landlord', filed two separate and successive petitions, before the Rent Controller seeking eviction of his tenants Amar Nath and Sughan Chand, hereinafter referred to as the 'appellants', and Smt Maya Devi, hereinafter referred to as the 'respondent' from the premises in their respective possession primarily on the ground that they were unsafe and unfit for human habitation. In course of the proceedings initiated thereupon against the appellants they moved an application seeking permission to effect repairs to their tenanted premises. On consideration of the

evidence adduced by the parties the Rent Controller rejected the petition for eviction but allowed the application of the appellants for repairs by a common order dated April 28, 1987. Aggrieved thereby the landlord filed two appeals before the appellate authority, one against the rejection of his petition for eviction and the other permitting the appellants to effect repairs. During the pendency of the appeals, the appellate authority appointed an advocate as Local Commissioner to inspect the disputed premises and submit a report about its condition. Relying upon the report submitted by the Local Commissioner and the evidence already on record the authority concluded that the disputed premises had become unfit and unsafe for human habitation and accordingly, allowed both the appeals and directed the appellants to vacate the premises. Assailing the common judgment of the appellate authority the appellants filed two revision petitions in the High Court.

3. In the meantime the Controller had allowed the petition filed by the landlord seeking eviction of the respondent and the appeal preferred against her eviction having stood dismissed, she filed a revision petition in the High Court. Before taking up the three revision petitions for hearing together, the High Court also appointed an advocate of the Court as a Local Commissioner for inspection of the premises tenanted to the appellants. The High Court also directed the Commissioner to ascertain whether the premises tenanted to the respondent were an integral part of the same building or not. Taking into consideration the report submitted by the Commissioner and the other materials on record the High Court disposed of all the three revision petitions by the impugned judgment, by allowing the revision petition of the respondent but dismissing both the petitions filed by the appellants. While the two appeals before us are directed against the orders passed on the petitions seeking eviction, the special leave petition has been filed against the order rejecting the prayer of the appellants to effect repairs.

4. Mr Lalit, the learned counsel appearing for the appellants drew our attention to the report submitted by the Local Commissioner appointed by the High Court and contended that having regard to the fact that he only found the common wall between the tenanted premises of the appellants and the adjacent room occupied by the landlord damaged, it could not be inferred therefrom that the entire tenanted premises were unfit and unsafe for human habitation, more particularly when, through necessary and adequate repairs the damage could be rectified. Relying upon the judgment of this Court in *Piara Lal v. Kewal Krishan Chopra*¹ Mr Lalit submitted that in absence of any evidence adduced to show that the entire building or a substantial part of it was in a damaged condition so as to make it totally unsafe and unfit for human habitation, the High Court was not justified in upholding the order of eviction solely on the basis of a finding that only the wall which divided the premises of the appellants and the landlord was damaged.

5. In our considered opinion the case of *Piara Lal*¹ does not come in aid of Mr Lalit as it is clearly distinguishable on facts. In that case, the leased portion comprised four rooms in the ground floor and it was common ground that the roof of one room in the rear side of the leased portion had fallen down requiring replacement. It is in the context of those facts that this Court concluded that unless the evidence warranted an inference that the falling down of the roof in one room was fully indicative of the damaged and weak condition of the entire building and that the collapse of the roof was not a localised event, the High Court was not justified in concluding that the entire building had become unsafe and unfit for human habitation.

6. In the case in hand, the appellants are the tenants in respect of one room only which they have been using as a shop room and the report of the Commissioner which has been accepted by the High Court discloses, amongst other damages, the following:

"The wall A-1 to A-2, which is common with the shop T-1 (premises tenanted to the appellants), has got big cracks and are 5 or 6 in number. In the wall A-1 to A-2, A-1 to A-2 is depressed, has left the roof about 4" from the roof level and one feet in length from the eastern corner of the joint of the wall and the roof."

7. Mr Lalit next drew our attention to *Shadi Singh v. Raksha* 2 to contend that the test in each case was whether it was absolutely necessary to have the tenant evicted to carry out repairs or structural alteration for making the building safe and fit for human habitation. Further it was to be enquired whether the repairs were so fundamental in character and extensive which could not be carried out without evicting the tenant from the building or while the tenant remained in occupation. As a corollary thereto, Mr Lalit submitted, if the repairs could be carried out without disturbance of the possession of the tenant, the need for eviction would be a mere wish of the landlord or a ruse to have the tenant evicted.

8. In the instant case both the appellate authority as also the High Court have on proper consideration and appraisal of the evidence adduced by, besides others, an Engineer and a Draftsman and the reports submitted by the Commissioners appointed by them respectively, have come to a conclusion that the premises tenanted to the appellants were unsafe and unfit for human habitation. Hence we will not be justified in disturbing the said finding in absence of any material to substantiate the contention of Mr Lalit that by repairs only the premises could be made safe and fit for human habitation. The appeal and the special leave petition filed by the appellants must, therefore, be dismissed.

9. Coming now to the premises occupied by the respondent, we find that after considering in details the evidence both the Rent Controller and the appellate authority recorded a finding that the premises were unfit and unsafe for human habitation. In such circumstances the High Court was not justified, while sitting in revision, to upset the same. Incidentally it may be mentioned that 2 (1992) 3 SCC 55 the Commissioner appointed by the High Court was asked only to ascertain the nature and condition of the premises occupied by the appellant and not the respondent. Indeed the High Court had asked the Commissioner to only ascertain, so far as the premises occupied by the respondent was concerned, as to whether it were an integral part of the building in which the shop of the appellants was situated. The appeal filed by the landlord must, therefore be allowed.

10. On the conclusions as above dismiss Civil Appeal No. 3663 of 1986 and SLP (C) No. 21117 of 1986; but allow Civil Appeal No. 3664 of 1986, set aside the judgment of the High Court in Civil in Revision No. 2467 of 1984, and restore that of the Rent Appeal No. 55/14 of 1983. However, there will be no order as to costs.