

previous employer more particularly when it had acquiesced with it when they allowed the appellant to join service. On the facts of the instant case we find that respondent No. 1 has treated the appellant unfairly. The order of the learned Single Judge is set aside.

(9) Consequently we allow the appeal and quash the order dated January 2, 1984 passed by respondent No. 1 relieving the appellant from the services of the Corporation with effect from January 2, 1984. Respondent No. 1 is directed to re-instate the appellant within one month from the date of receipt of this order with all back wages and consequential benefits. No Costs.

S.C.K.

*Before J. V. Gupta, J.*

MURTI SHRI RADHA KRISHAN PARNAMI MANDIR,—*Petitioner.*

*versus*

DES RAJ,—*Respondent.*

*Civil Revision No. 3363 of 1987*

*January 23, 1989.*

*Transfer of Property Act (IV of 1882)—S. 108(h)—Tenant constructing tin sheet roof—Eviction of tenant ordered—No direction in such order regarding constructions made by tenant—Landlord taking possession of premises in execution—Tenant claiming return of tin sheets—Validity of such claim—Tenant has no right after delivery of possession.*

*Held.* that once the tenant was dispossessed from the demised premises, he was not entitled to the things which were attached to the earth as contemplated under Section 108(h) of the Transfer of Property Act, 1882. Moreover, there was no such direction in the eviction order, nor at the time of the delivery, these goods were handed over to the superdar.

(Para 4).

*Petition under Section 115 C.P.C. for revision of the order of the court of Shri S. S. Lamba, HCS, Additional Senior Sub Judge, Ambala dated 31st August, 1987 ordering the D.H to restore the*

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*possession of 22 tin-shed to the J. D. within 15 days. In case, the Tin-sheds are not found available or destroyed or used somewhere the D.H. would make payment of Rs. 2,000 to the J.D., because the approximate of costs of one shed is not less than Rs. 100. Costs of this petition, assessed at Rs. 100 is also allowed to the JD/applicant.*

Ashok Gupta, Advocate, for the petitioner.

M. S. Sullar, Advocate, for the respondent.

**ORDER**

*J. V. Gupta, J.*

(1) This revision petition is directed against the order of the executing Court dated August 31, 1987, whereby the decree-holder (the landlord) was ordered to restore the possession of 22 tin-sheets to the judgment-debtor within 15 days and if the tin-sheds are not found available, the decree-holder will make payment of Rs. 2,000 to the judgment-debtor.

(2) At the time of the motion hearing, the operation of the impugned order was stayed on November 13, 1987.

(3) The judgment-debtor tenant took on rent the vacant land surrounded by walls from the decree-holder. The judgment-debtor under the terms of the tenancy, was allowed to construct shed etc. to start manufacturing of soap therein. Later on ejection application was filed against the tenant which was allowed. In the ejection application, the tenant was proceeded *ex parte*. He applied for setting aside the *ex parte* eviction order, but the same was declined.

Thereafter application for execution was filed. The judgment-debtor raised objections thereto, but the same were dismissed. Even the revision petition against that order was dismissed by this Court. Thereafter, the possession was delivered to the decree-holder with the aid of the Police on August 27, 1985. At that time, the material meant for preparation of soap was handed over to one Sunder Lal on *superdari*. The present application for restoration of the tin-sheets was filed on August 29, 1985. That application was resisted by the decree-holder on the ground that the tenant was not entitled to their restoration, nor those goods were ever delivered to the *superdar*. Only the goods given to the *superdar* were to be handed over to the

judgment-debtor. After the issues were framed and the parties were allowed to lead evidence, the executing court came to the conclusion that the walls and the tin-shed were existing at the time of the delivery of the possession and, therefore, the tenant was entitled to the restoration of the tin-sheets. According to the executing Court, the judgment-debtor in his statement has stated that there were 22 tin-sheets which the decree-holder had retained and on that basis, allowed the said 22 tin-sheets to be restored to the tenant.

(4) The learned counsel for the decree-holder petitioner submitted that the tenant was not entitled to restoration of the tin-sheets, nor there was any such direction in the eviction order. He referred to section 108(h) of the Transfer of Property Act, (hereinafter referred to as the Act), to contend that the lessee may even after the determination of the lease remove at any time whilst he is in possession of the property leased, but not afterwards, all things which he has attached to the earth, provided he leaves the property in the state in which he received it. Thus, according to the learned counsel, once the tenant was dispossessed from the demised premises, he was not entitled to anything which was attached to the earth. Moreover, argued the learned counsel, there is nothing in the statement of the judgment-debtor that there were 22 tin-sheets. This is a misreading of his statement. In support of the contention, the learned counsel relied upon *T. N. Ramachandra Naidu v. T. R. Paramaswaran Nair* (1), wherein it was held that the superstructure becomes part of the demised premises and property of the landlord after the tenant is dispossessed from the rent premises.

(5) After hearing the learned counsel I find merit in this contention. Once the tenant was dispossessed from the demised premises, he was not entitled to the things which were attached to the earth as contemplated under section 108(h) of the Act. Moreover, there was no such direction in the eviction order, nor at the time of the delivery, these goods were handed over to the *superdar*. In these circumstances, no such application for restoration was maintainable before the executing court.

(6) Consequently, this revision petition succeeds and is allowed. The impugned order is set aside and the application for restoration filed by the judgment-debtor is dismissed with no order as to costs.

S.C.K.

(1) 1970, Rent Control Reporter, 692.