

The Indian Law Reports

REVISIONAL CIVIL

Before D. K. Mahajan, J.

SIRI KRISHAN DEV,—*Petitioner*

versus

JHABU RAM,—*Respondent*

Civil Revision No. 805 of 1966

September 12, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(iii)—Impairment or utility of a building—Whether to be examined from the point of view of the owner—Material alterations by tenant—Whether impairs utility of the building.

Held, that the impairment or utility of a building in the occupation of a tenant has to be examined from the point of view of the owner and not of the tenant. If the alterations in the building by the tenant are of a far-reaching nature and completely alter the nature of the building the case is covered by clause (iii), sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, as they impair the utility of the building. (Para 3)

Petition under section 15(v) of the East Punjab Urban Rent Restriction Act, 1949 for revision of the order of Shri Surinder Singh, Appellate Authority, Hissar, dated 8th July, 1966, reversing that of Shri H. C. Gupta, Sub-Judge, 1st Class, Hissar, dated 7th May, 1965.

H. L. SARIN, SENIOR ADVOCATE, WITH H. S. AWASTHY, ADVOCATE, for the Petitioner.

N. C. JAIN, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—This petition for revision is directed against the order of the Appellate Authority, reversing, on appeal, the decision of the Rent Controller ordering the ejection of the tenant under section 13(2)(iii) of the East Punjab Urban Rent Restriction Act.

(2) On facts, there is no dispute. Under a Rent Note dated the 29th of March, 1956, the building as set out in the plan, Exhibit P. 1, was rented out to the tenant by the landlord. It was stipulated in the Rent Note that the tenant will not do anything to the building which will not be acceptable to the landlord. At the time, when the building was rented out, it consisted of a *Verandah*, a *Kotha* and a Court-yard. The *Kotha* had no opening into the *Verandah*, but opened into the Court-yard; it had also two openings towards the North. The Court-yard had doors, opening into it, both from South and West. The *Verandah* also had an opening from the North and was accessible from the Court-yard. The tenant demolished a part of the building; and the building, as it now stands, is denoted on the plan, Exhibit 'PY'. The length of the *Verandah* has been reduced; and the part of the length, that has been reduced, has been included in the *Kotha*. The *Kotha* has been converted into a garage. The openings of the *Kotha* on the North have been closed. Its opening into the Court-yard has also been closed. It now opens into the *Verandah*. In front of the *Verandah*, which is left after this alteration, a Tin Shed has been put up thereby reducing the width of the Court-yard as well. The entrance to the Court-yard from the South has also been closed. The correctness of these plans is not disputed by either party.

(3) The short question, that fell for determination before the Rent Controller as well as the Appellate Authority, was, whether these alterations impaired materially the value or utility of the building? The plea of the landlord was that the building had been deliberately pulled down to alter it; whereas that of the tenant was that part of the building had fallen on account of rains. The Rent Controller found that there was no truth in the plea of the tenant that the building had fallen by rain and that, in fact, the building had been pulled down to alter it. This finding was maintained by the Appellate Authority. On the question, whether the utility of the building had been impaired, the Rent Controller found that the utility had been impaired; and, therefore, ordered eviction. This finding has been reversed by the Appellate Authority. It appears that the Appellate Authority was totally oblivious to the requirements of law; and its judgment cannot be sustained. The impairment or utility has to be examined from the point of view of the owner and not from the point of view of the tenant. The building, as it now stands, is totally different from the building that was rented out; and this state of affairs has come

The Panipat Woollen & General Mills Company Ltd., etc. v. R. L. Kaushik
etc. (Pandit, J.)

about by the act of the tenant. No tenant is permitted to do this under the law. No authority has been cited before me which shows that any material alteration to the building is not covered by clause (iii), sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act. The cases cited at the bar are only those where there was only an inconsequential alteration and that too not to the main building; and for instance in one case, a communicating door was opened between two rooms. In the present case, on the facts, as they stand out from the evidence, it is absolutely clear that the alterations are of a far-reaching nature and have completely altered the nature of the building. I am, therefore, clearly of the view that the Rent Controller was right in holding that the present case was covered by clause (iii), sub-section (2) of section 13; and the Appellate Authority has completely gone wrong in reversing its decision.

(4) Mr. N. C. Jain, learned counsel for the respondent, raised the contention that a notice under section 106 of the Transfer of Property Act was not issued. No such objection was taken at the trial. It may very well have been that there was such a notice. But as the matter was not raised and not tried, the learned counsel cannot be permitted to raise this plea at the revisional stage.

(5) For the reasons recorded above, I allow this petition; quash the order of the Appellate Authority and restore that of the Rent Controller. The petitioner will have his costs in this Court.

K. S.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

THE PANIPAT WOOLLEN AND GENERAL MILLS COMPANY LTD.,
AND ANOTHER—*Petitioners*

versus

R. L. KAUSHIK AND OTHERS,—*Respondents*

Civil Revision No. 545 of 1968

September 16, 1968

Indian Companies Act (I of 1956)—Ss. 10 and 398—Code of Civil Procedure (Act V of 1908)—S. 9—Plaintiff filing suit claiming decree for declaration that he is the director of a company—Cognizance of such suit by Civil Courts—Whether expressly or impliedly barred.