

PETITIONER:
PIARA LAL

Vs.

RESPONDENT:
KEWAL KRISHAN CHOPRA

DATE OF JUDGMENT 06/05/1988

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1988 AIR 1432 1988 SCR Supl. (1) 202
1988 SCC (3) 51 JT 1988 (2) 502
1988 SCALE (1) 1012

ACT:

East Punjab Urban Rent Restriction Act, 1949: Section 13(3)(a) (iii)-Tenant-Eviction of-On ground premises became unsafe and unfit for human habitation-Falling down of roof in one room-Whether sufficient for a declaration building unsafe and unfit for human habitation.

HEADNOTE:

The suit premises consisted of four rooms in the ground floor where the appellant-tenant was running his office. One room in the first floor was in the possession of the landlord-respondent. The roof of one room in the rear side of the leased portion had fallen down, and it has been replaced by the appellant after obtaining orders of the Rent Controller under Section 12 of the East Punjab Urban Rent Restriction Act, 1949.

The landlord filed a petition for eviction on the ground of bona fide requirement of the premises for his own use and occupation, and change of user of the premises by the tenant. As he failed before the Rent Controller, he preferred an appeal and during the pendency of the appeal he obtained the court's order and amended the petition and raised an additional ground under Section 13(3)(a)(iii) of the Act, seeking eviction of the tenant on the ground that the leased premises had become unsafe and unfit for human habitation. The Appellate Authority called for a findings on this additional ground from the Rent Controller and the finding went against the landlord. The Appellate Authority concurred with the Rent Controller on the said finding and dismissed the appeal.

The respondent preferred a Civil Revision Petition before the High Court which sustained the case, and ordered the eviction of the appellant under Section 13(3)(a)(iii) of the Act. The High Court came to the finding that the falling down of the roof of one of the rooms afforded by itself a cause of action to the landlord to seek eviction of the tenant under the said section, and the said cause of action would subsist even if the tenant had repaired the roof under orders of the Rent Controller under Section 12 of the Act.

203

In the appeal to this Court by the tenant it was

contended that the Rent Controller and the Appellate Authority had concurrently found that the building was neither unsafe nor unfit for human habitation and as such the High Court was not justified in interfering with those findings especially when they were findings of fact. On behalf of the respondent, the appeal was contested on the ground that the falling down of the roof in a room was indicative of the damage condition of the building and, therefore, the High Court was fully justified in ordering eviction, and that the replacement of the roof by the appellant would not extinguish the right which had accrued to the respondent under Section 13(3)(a)(iii) to seek recovery of the possession of the leased premises.

Allowing the appeal,

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HELD: 1. The High Court was not justified in allowing the revision and directing eviction of the appellant under Section 13(3)(a)(iii). [206H]

2. The High Court proceeded on the erroneous assumption that the falling down of the roof in one room was itself sufficient to warrant a finding that the entire building had become unfit and unsafe for human habitation and called for a declaration to that effect. [207F]

In the instant case, the admitted position was except for the roof in one of the rooms falling down, no other damage to the building was noticed and in such circumstances, there is no scope for holding that a substantial or major part of the building had become unfit and unsafe for human habitation and hence an order of eviction was called for. [208G-H]

3. The High Court had wrongly assumed that besides the falling down of the roof, one of the walls has also crumbled. This assumption was a mistaken one because the expert witnesses examined during the trial by the parties have spoken about the good condition of three walls alone of the room and not the fourth because they are the outer walls of the room while the fourth wall was a common wall for the room in question, and the adjoining room and hence there was no need to certify its good condition. [205E-F]

4. The High Court had also failed to notice two factors of relevance: viz. (1) that the respondent had given his consent to the Rent Controller granting permission under Section 12 of the Act to the appel-
204

lant to replace the roof, and (2) that in spite of the alleged cause of action having arisen due to the falling down of the roof, the respondent did not seek amendment of the petition so as to seek eviction of the appellant on the additional ground under Section 13(3)(a)(iii) but instead he chose to prosecute his petition only on the original ground for eviction set forth therein and only after falling before the Rent Controller and preferring an appeal to the Appellate Authority, he deemed it necessary to amend the petition and ask for eviction of the appellant on the additional ground. [207C-E]

5. The aforesaid conduct of the respondent clearly reveals that he himself has not attached any significance to the falling down of the roof in one of the rooms and has not seriously considered the sustainable cause of action that had arisen to him under Section 13(3)(a)(iii) for seeking eviction of the appellant. [207E-F]

Balbir Singh v. Hari Ram, AIR 1983 Punjab and Haryana 132; Chander Mohini v. Jiva Singh, [1983] 2 RCJ 523 and Sardarni Sampurna Kaur v. Sant Singh & Anr., [1983] PLR 449, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1682 of 1984.

From the Judgment and order dated 23.12.1983 of the Punjab and Haryana High Court in Civil Revision No. 959 of 1979

V.M. Tarkunde, A.D. Sikri for the Appellant.

Hardev Singh and R.S. Sodhi for the Respondents.

The judgment of the Court was delivered by

NATARAJAN, J. What falls for consideration in this appeal by special leave by a tenant against the judgment of the High Court of Punjab and Haryana in a Civil Revision is whether the High Court had transgressed its revisional powers in interfering with the concurrent findings rendered by the Rent Controller and the Appellate Authority and ordering the eviction of the appellant herein from the leased premises and secondly whether the High Court had erred in holding that the leased premises had become unsafe and unfit for human habitation as envisaged in Section 13(3)(a)(iii) of the East Punjab Urban Rent Eviction Act, 1949 (hereinafter the Act).

205

The respondent's petition for eviction was originally based on other grounds such as bona fide requirement of the premises for own use and change of user of the premises by the tenant. As he failed before the Rent Controller, the respondent preferred an appeal and during the pendency of the appeal he obtained orders and amended the petition and raised an additional ground under Section 13(3)(a)(iii) for seeking the eviction of the appellant viz. the leased premises had become unsafe and unfit for human habitation. The Appellate Authority called for a finding on the additional ground from the Rent Controller and the finding went against the respondent. The Appellate Authority concurred with the Rent Controller on the said finding and dismissed the appeal. Before the appellate Authority the respondent did not seriously press the original grounds on which eviction was sought for and laid stress only upon the ground under Section 13(3)(a)(iii) of the Act. The respondent then preferred a Civil Revision wherein the High Court sustained his case and ordered the eviction of the appellant under Section 13(3)(a)(iii) and hence the present appeal by the appellant-tenant.

Section 13(3)(a)(iii) was resorted to for seeking eviction of the tenant on the footing that one room in the rear-side of the leased premises had fallen down. We may state, even at this juncture that the High Court had wrongly assumed that besides the falling down of the roof, one of the walls had also crumbled. This assumption was a mistaken one because the expert witnesses examined during the trial by the parties have spoken about the good condition of three walls alone of the room and not the fourth because they are the outer walls of the room while the fourth wall was a common wall for the room in question and the adjoining room and hence there was no need to certify its good condition. It was therefore wrong for the High Court to have assumed that only three walls of the room were in good condition and not the fourth wall.

The High Court deemed it necessary to allow the Revision and set aside the order of the Rent Controller and the Appellate Authority because of its view that the falling down of the roof of one of the rooms afforded by itself a

cause of action to the landlord to seek eviction of the tenant under Section 13(3)(a)(iii) and the said cause of action would subsist even if the tenant had repaired the roof under orders of the Rent Controller, under Section 12 of the Act. It is necessary to mention here that during the pendency of the proceedings before the Rent Controller, the appellant obtained the permission of the Rent Controller under Section 12 to replace the roof fallen down and re-

cover the cost from the respondent since the respondent had failed to do the work himself. The High Court relied upon two decision Balbir Singh v. Hari Ram, AIR 1983 Punjab and Haryana 132 and Chander Mohini v. Jiva Singh, [1983] 2 RCJ 523 for holding that once a cause of action ensued under Section 13(3)(a)(iii), it would subsist inspite of any repairs effected by the tenant. It also relied on another decision Sardarni Sampurna Kaur v. Sant Singh & Anr., [1983] PLR 449 for holding that even if the rest of the building was in good condition, the falling down of the roof of one room would constitute sufficient material to sustain a landlord's claim under Section 13(3)(a)(iii) of the Act for seeking the tenant's eviction.

A few facts may now be set out. The leased portion comprises of four rooms in the ground floor where the appellant is running his office. There is a room in the first floor in the possession of the respondent himself but we are not concerned with it. It is common ground that the roof of one room in the rear-side of the leased portion had fallen down and it had been replaced by the appellant after obtaining orders of the Rent Controller under Section 12. The appellant's contention is that the falling down of the roof in one of the four rooms would not by itself render the entire building unsafe and unfit for human habitation as envisaged under Section 13(3)(a)(iii) of the Act and, as such, the High Court had erred in ordering eviction under the said provision. It was further urged that the Rent Controller and the Appellate Authority had concurrently found that the building was neither unsafe nor unfit for human habitation and as such the High Court was not justified in interfering with those findings especially when they were findings of fact. In reply to the above said contentions, the learned counsel for the respondent argued that the falling down of the roof in a room was indicative of the damaged condition of the building and, therefore, the High Court was fully justified in ordering the eviction of the appellant under Section 13(3)(a)(iii) of the Act. It was further urged that the replacement of the roof by the appellant would not extinguish the right which had accrued to the respondent under Section 13(3)(a)(iii) to seek recovery of possession of the leased premises and the High Court had rightly adverted to this aspect of the matter also while allowing the revision filed by the respondent.

On a careful consideration of the matter with reference to the contentions put-forth by the learned counsel for the parties, we are clearly of opinion that the High Court was not justified in allowing the revision and directing the eviction of the appellant under Section 13(3)(a)(iii). It is true that a roof of one of the rooms on the rear-side

had fallen down and required replacement but there was no evidence whatever that the entire building or a substantial portion of it was in a damaged condition and consequently the building as a whole had become unfit and unsafe for human habitation. 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, we fail to see how the High Court could have concluded that the entire building had become unsafe and unfit for human habitation. In fact, the appellant had replaced the roof only at a cost of about Rs.200 and this would independently show that the damage that had occurred could not have been of a serious or disquieting nature. The High Court has failed to notice two factors of relevance, viz., (1) that the respondent had given his consent to the Rent Controller granting permission under Section 12 of the Act to the appellant to replace the roof and (2) that in spite of the alleged cause of action having arisen due to the falling down of the roof, the respondent did not immediately seek amendment of the petition so as to seek eviction of the appellant on the additional ground under Section 13(3)(a)(iii) but instead he chose to prosecute his petition only on the original grounds for eviction set forth therein and only after failing before the Rent Controller and preferring an appeal to the Appellate Authority, he deemed it necessary to amend the petition and ask for eviction of the appellant on the additional ground under Section 13(3)(a)(iii). The above said conduct of the respondent would clearly reveal that he himself had not attached any significance to the falling down of the roof in one of the rooms and had not seriously considered that a sustainable cause of action had accrued to him under Section 13(3)(a)(iii) for seeking the eviction of the appellant. The High Court has not only failed to appreciate these factors but has also proceeded on the erroneous assumption that the falling down of the roof in one room was by itself sufficient to warrant a finding that the entire building had become unfit and unsafe for human habitation and called for a declaration to that effect. It is this basic error which has affected the reasoning of the High Court lead the High Court to apply the ratio laid down in certain cases where the facts and circumstances were entirely different.

What arose for consideration in Balbir Singh's case (supra) was whether a tenant would stand deprived of his right under Section 12 to carry out repairs of the tenanted premises by reason of an application filed by a landlord under Section 13(3)(c) of the Haryana Urban Control on Rent and Eviction Act (Corresponding to Section 13(3)(a)(iii) of the East Punjab Urban Rent Restriction 'Act, 1949) and con-208

versely whether a landlord would stand deprived of his right to seek eviction of his tenant under Section 13(3)(c) by reason of an order passed under Section 12 empowering the tenant to carry out repairs to the tenanted premises. It was in that context, the High Court held that the two sections operated in their respective spheres and they were not mutually destructive of each other and consequently, when a right accrued to a landlord under Section 13(3)(c) of the Haryana Act to seek eviction of a tenant, the right would not get extinguished on account of an order passed under Section 12 of the Act. In other words, it was held that once a cause of action had arisen for a landlord to seek eviction under Section 13(3)(c) of the Haryana Act that the said cause of action would ensure to the benefit of the landlord in spite of the tenant effecting repairs to the building for his benefit in pursuance of permission obtained under Section 12 of the Act. The decision does not lay down that each and every damage to a building, without reference to the seriousness of its nature or to the condition of the building as a whole would by itself entitle a landlord to

invoke Section 13(3)(a)(iii) to seek eviction of the tenant. In Chander Mohini's case (supra) wherein Balbir Singh's case (supra) was followed, it was held that if the tenants had pulled down the roof of one of the rooms under their tenancy and replaced the same, obviously for their own convenience and for pre-empting the landlord from filing a petition for eviction under Section 13(3)(a)(iii), the landlord would undoubtedly, acquire a cause of action under Section 13(3)(a)(iii) as soon as the tenants had pulled down the roof of the room and his rights could not be defeated by the tenants by the replacement of the roof of their own volition. The other decision in Sardarni Sampurna Kaur v. Sant Singh has also no relevance because it was found in that case that even though the portion under the occupation of the tenant was in a sound condition, a substantial portion of the composite building had become unfit and unsafe for human habitation. In that situation, the High Court held that what was relevant for consideration for passing an order of eviction under Section 13(3)(a)(iii) was the condition of the building viewed as a whole and not in parts or blocks. In the instant case, the admitted position is that except for the roof in one of the rooms falling down, no other damage to the building was noticed and in such circumstances, there is no scope for holding that a substantial or major part of the building had become unfit and unsafe for human habitation and hence an order of eviction was called for. It is therefore obvious that the ratio laid down in the earlier decisions were not at all attracted to the facts of the case and the High Court had wrongly applied them because of its erroneous assumptions.

209

Learned counsel for the respondent tried to contend that apart from the building having become unsafe and unfit for human habitation, the respondent had also sought eviction on the ground he was genuinely in need of additional accommodation but the Appellant Court had unjustly rejected the plea by saying that since the respondent was jointly living with his son, he can secure additional accommodation from out of the portion in his son's occupation. We do not find any merit in this contention because the requirement of the building on this ground was not canvassed before the High Court. Even the Appellant Authority has observed that the only ground pressed for seeking eviction of the tenant was under Section 13(3)(a)(iii) and the other grounds were not pressed seriously and only incidentally a halfhearted argument was advanced regarding the requirement of the leased premises by way of additional accommodation.

In the result, the appeal is allowed and the judgment of the High Court is set aside. The respondent's application for eviction of the appellant will stand dismissed as ordered by the Rent Controller and the Appellate Authority. The parties are, however, directed to pay and bear their respective costs.

N.V.K.

Appeal allowed.

210