

CASE NO.:
Special Leave Petition (civil) 11001 of 2001

PETITIONER:
BRITISH MOTOR CAR CO.

RESPONDENT:
MADAN LAL SAGGI (D) AND ANR.

DATE OF JUDGMENT: 19/11/2004

BENCH:
SHIVARAJ V. PATIL & B.N. SRIKRISHNA

JUDGMENT:
JUDGMENT

2004 Supp(6) SCR 203

The following Order of the Court was delivered :

This is a desperate attempt on the part of the petitioner, who was unsuccessful throughout, to hold on to the premises of which he is the tenant.

The petitioner is the tenant of land and building constructed upon a plot in Jalandhar. Sometime in the year 1967 the petitioner was inducted into the premises by a lease agreement dated 25.10.1967. "The lease agreement, inter alia, contained a clause which said, "that the lessees will not make any addition or alteration or change in the building during the period of tenancy".

The respondent-landlord moved a petition under section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the petitioner-tenant on two grounds, namely, (1) that the petitioner had not been paying the enhanced rent as per the terms of the agreement; and (2) that though the earlier the petitioner had made a temporary shed over the generator which was placed in the courtyard, the petitioner had now extended and made further construction of two pacca sheds without consent of the landlord in the courtyard and by constructing the sheds the petitioner had materially impaired the value and utility of the premises.

The Rent Controller raised the following issues :

1. Whether the respondent is in arrears of rent?
2. Whether the respondent has made additions and alternations without the consent of the petitioner and has materially impaired the value and utility of the premises in question?
3. Whether the petitioners are estopped from filing the present petition by their own act and conduct as alleged?
4. Whether the petitioner are debarred from demanding the access rent?
5. Relief-After trial of the application, the Rent Controller answered the first issue in favour of the petitioner, With regard to the 2nd issue, the Rent Controller held that the constructions made were of such nature as to materially impair the value and utility of the premises and an act which would amount to a ground for eviction under section 13(2)(iii) of the Act,

The Rent Controller decided the third issue in the favour of the petitioner and held that the previous litigation pertained to a temporary shed covering the generator in which the finding had been that there was no

material impairment of the value and utility of the premises. Although, the respondent-landlord had attempted to evict the petitioner-tenant for this reason, he had failed throughout in the litigation right up to this Court. The Rent Controller took the view that this did not prevent the landlord from moving again on the fresh cause of action.

The appellate authority under the Act, after careful re-appreciation of the evidence on record completely affirmed the findings recorded on the issues by the Rent Controller. The appellate authority also took the view that the sheds constructed by the tenant are of permanent nature which could not be removed without doing damage to the building in question as they were embedded in the floor and also in the side wall; that by constructing the three sheds on almost whole of the courtyard, the petitioner had not only obstructed ventilation to the courtyard, but had also reduced the area of the courtyard considerably. According to the appellate authority, this certainly amounts to "materially impairing the value of the premises". The appeal therefore failed.

Although the High Court was merely deciding a civil revision petition by the unsuccessful tenant, the High Court has also re-appreciated the evidence threadbare and affirmed the findings of the two courts below. The High Court has rightly rejected the contention that merely because in the previous litigation the petitioner-tenant had succeeded, that could not debar the respondent-landlord from moving a petition for eviction based on subsequent events affording him a fresh cause of action. The High Court has affirmed the findings of the two courts below that the value and utility of the courtyard had been totally impaired as further construction had been made thereupon by the petitioner without the written consent of the landlord.

The landlord counsel for the petitioner strenuously contended that the two authorities under the Act and the High Court erred completely both on facts and in law. He took us through some of the material on record to convince us that the findings were perverse. We are not impressed by this attempt. There was adequate evidence before the Rent Controller which indicated in no uncertain terms that the sheds which were recently constructed were of a permanent nature, that the construction was of such nature which could not be dismantled without substantial damage to the structure and, in any event, by making the construction of the sheds in question the petitioner had committed acts likely to impair materially the value and utility of the premises and the land leased out to him. The appellate court and the High Court have re-appreciated the evidence on record and affirm these findings.

In our view, there is no scope for further re-appreciation of the evidence as that is not the function of this Court under Article 136 of the Constitution.

The learned counsel referred to the observations of this Court in *Om Prakash v Amar Singh and Others*, [1987] 1 SCC 458 (Para 6); *Om Pal v. Anand Swarup*, [1988] 4 SCC 545 (Para 9) and *Waryam Singh v, Baldev Singh*, [2003] 1 SCC 59, and contended that the legal test as to what would amount to an act "likely to impair the material value and utility of the land" has been laid down in these judgments and that this test has not been correctly applied by the courts below.

In our view, the contention has no substance. The judgments cited before us turned on their peculiar facts. They were different instances in which the test was applied to see whether the construction fell within the parameters of the ground of eviction. When the construction is alleged to have materially impaired the value and utility of the premises, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building, [See *Om Pal* (supra)].

In *Om Prakash* (supra) it was held that the essential element which needs

consideration is as to whether the constructions are substantial in nature and they alter the form, front and structure of the accommodation. It is not possible to give an exhaustive list of constructions which constitute material alterations, as the determination of this question depends on the facts of each case.

In Gurbachan Singh and Another v. Shivalak Rubber Industries and Ors,, [1996] 2 SCC 626 it was held that the "question whether the alleged addition and alterations materially impaired the value and or utility of the premises in question is a mixed question of law and fact to be determined on the application of correct principles".

Again in Vipin Kumar v. Roshan Lal Anand and Others, [1993] 2 SCC 614 at 617 it was observed "the impairment of the value or utility of the building is from the point of the landlord and not of the tenant",

We have been taken though the judgment of the two courts below and that of the High Court. We have no manner of doubt that the three courts have correctly applied the true test on the facts found that the sheds constructed by the petitioner-tenant amounted to an act materially impairing the value and utility of the premises and the land leased out to him so as to amount to a ground of eviction under section 13(2)(iii) of the Act. We see no reason to take a different view of the matter.

There is no merit in the petition. The special leave petition is accordingly dismissed.