

Malik Hans Raj v. Prem Pal Singh and others (J. V. Gupta, J.)

(15) Under these circumstances, I do not find any infirmity or illegality in the judgment of the lower appellate Court as to be interfered with in the second appeal. Consequently, the appeal fails and is dismissed with costs.

N. K. S.

Before J. V. Gupta, J.

MALIK HANS RAJ,—Petitioner.

versus

PREM PAL SINGH and others,—Respondents.

Civil Revision No. 2922 of 1980.

October 5, 1982.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(4)—Order of ejection passed against a tenant on the ground of personal necessity of the landlord—Possession obtained by the landlord in execution of the order—Tenant applying for restoration of possession under section 13(4)—Landlord selling the property and the building reconstructed—Tenant—Whether entitled to possession of the reconstructed building.

Held, that the building which was rented out to the tenant to which he is entitled to be restored under section 13(4) of the East Punjab Urban Rent Restriction Act, 1949 does not exist at the site because the objectors-vendees have reconstructed it. Under the circumstances, the tenant could not be allowed the restoration of possession of the building which exists at the site even if the doctrine of *lis pendens*, as contemplated under section 52 of the Transfer of Property Act, 1882 is at all attracted to the facts of the case. Under the provisions of section 13(4) of the Act, a tenant is entitled to the restoration of the building which was rented out to him and was got vacated by the landlord from him on the ground that he *bona fide* required the same for his own use and occupation. However, if for certain reasons the said rented building ceases to exist after the tenant had vacated the same in pursuance of the ejection order, then the tenant cannot claim the restoration of the building which has been constructed subsequently after the demolition of the building originally rented out to him. Under section 13(4) of the Act, the interest of a tenant is a limited one. He is not entitled to any property as such, but is entitled only to the restoration of possession of the building rented out to him from which he was ejected in pursuance of the order of eviction. Moreover, the vendees who

had purchased the property from the previous landlord are themselves entitled to seek ejection of the tenant on the ground of their *bona fide* requirement for their own use and occupation. In case the tenant is allowed restoration of the building which has been reconstructed, then it will unnecessarily lead to multiplicity of proceedings. (Paras 4 and 5).

Petition Under Section 115 C.P.C. for the revision of the order of the court of Shri Harjit Singh, Sub-Judge, 1st Class, Ludhiana dated the 5th June, 1980 accepting the petition and Hans Raj is not liable to get the possession from the Objectors.

Anand Sarup, Senior Advocate (Sanjiv Pabbi, Advocate with him), for the Petitioner.

D. V. Sehgal & B. R. Mahajan, Advocates & P. S. Rana, Advocate, for the Respondent Nos. 2 & 3.

JUDGMENT

J. V. Gupta, J.

(1) This revision petition is directed against the order of the executing Court, dated June 5, 1980, whereby the objection petition filed on behalf of Raghu Nath Bajaj and Satish Kumar Bajaj, respondents Nos. 2 and 3, respectively, was accepted.

(2) The brief facts, giving rise to this revision petition are that on May 11, 1972, Major Prem Pal Singh, respondent No. 1, obtained an order of ejection against the tenant—petitioner from the Court of the Rent Controller. In execution of the said order of ejection, the landlord got actual possession of the demised premises on August 14, 1973. On August 12, 1974, the petitioner moved the application under section 13(4) of the East Punjab Urban Rent Restriction Act, (hereinafter called the Act), for restoration of possession of the building which was rented out to him previously, on the allegations that the landlord who had obtained possession in pursuance of the order from the Rent Controller on the ground that he *bona fide* required the premises for his own use and occupation, had failed to occupy the same; rather he had rented out the same again to some other tenant. That application remained pending for about three years. On February 15, 1977, the building, in dispute, was purchased by respondents Nos. 2 and 3, from the owner Major Prem Pal Singh, respondent No. 1. Having sold the property, respondent No. 1 allowed the proceedings to continue *ex parte* against him before the Rent

Malik Hans Raj v. Prem Pal Singh and others (J. V. Gupta, J.)

Controller. On July 20, 1977, the Rent Controller, ultimately, dismissed his application under section 13(4) of the Act. On August 12, 1977, an appeal was filed on behalf of the tenant—petitioner before the Appellate Authority. In this appeal, Major Prem Pal Singh, respondent No. 1, who had already sold the property in favour of respondents Nos. 2 and 3 and who had allowed the proceedings to continue *ex parte* against him before the Rent Controller, was only made a party. The vendees—respondents Nos. 2 and 3, were not impleaded as respondents in that appeal. The Appellate Authority,—*vide* order, dated October 22, 1977, accepted the appeal and set aside the order of the Rent Controller and directed the restoration of possession of property No. 353/L, Model Town Ludhiana to the petitioner, when the execution was sought on behalf of the petitioner of the order of the Appellate Authority, an objection petition was filed on behalf of respondents Nos. 2 and 3. It was pleaded therein that there existed no order against them and, therefore, no execution was maintainable *qua* them. They were the owners, in possession, of the building, in their own rights. It was further stated that they were the *bona fide* purchasers for consideration and without notice of any proceedings whatsoever. They purchased the property for their residence by spending a sum of Rs. 48,000. The order, dated October 22, 1977, passed by the Appellate Authority, was, thus, not binding on them as they were not parties to any proceedings, nor any order had been passed against them. They had their independent rights in the property and were in possession of the building as such. It was specifically pleaded that the order of the Appellate Authority, dated October 22, 1977, was inexecutable as the property regarding which it was passed was not in existence. At the time the order of ejection was passed, the building was lying in a ruinous condition. At the time of the purchase, considering their family status, the objectors, rebuilt the entire building by spending more than Rs. 40,000 and that they were residing therein. The present building was quite a different building than the one which was previously in existence and the order of the Appellate Authority could not be executed against them *qua* the building which now exists at the site. The objection petition was contested on behalf of the petitioner. It was pleaded that the objectors had purchased the property on February 15, 1977, during the pendency of the restoration application and, therefore, they had no *locus standi* to file the objection petition. Since they had purchased the property during the pendency of the proceedings, they could not be said to be the owners thereof in their own rights. They had the notice of the proceedings before the Rent Controller and, therefore,

they were not the *bona fide* purchasers for value and consideration. On the pleadings of the parties, the executing Court framed the following issues:

- (1) Whether the order directing the restoration of possession to the decree-holder Hans Raj is not executable against the objectors on the ground mentioned in paragraph No. 2 of their objection petition ?
- (2) Whether the objectors have the *locus standi* to file the objections and to resist the execution of the order, dated October 22, 1977 ?
- (3) Relief.

The executing Court accepted the objection petition and it was held that the decree-holder was not entitled to get the possession from the objectors. It was found as a fact that the objectors were the *bona fide* purchasers for value and by reason of the subsequent construction raised by them, the original building, which was rented out to the petitioner for which he was entitled to restoration, did not exist at the site. Since the nature of the property had changed altogether, the petitioner was not entitled to the restoration of the building. Dissatisfied with the same, the decree-holder has filed this revision petition.

(3) The learned counsel for the petitioner, vehemently contended that the objectors purchased the property, in dispute, during the pendency of the proceedings before the Rent Controller and, therefore, the transfer of the property in their favour was hit by the doctrine of *lis pendens* as provided under section 52 of the Transfer of property Act. According to the learned counsel, once it is found that the transfer was made during the pendency of the proceedings, then the question of the objectors being the *bona fide* transferees as such does not arise. The argument proceeds that in such a situation, the provisions of section 13(4) of the Act will be rendered nugatory in case the objectors are allowed to plead that they were the *bona fide* purchasers for value and without notice of the proceedings before the Rent Controller. The whole approach of the executing Court, argued the learned counsel, is wrong and illegal and it has, thus,, acted illegally in the exercise of its jurisdiction.

Malik Hans Raj v. Prem Pal Singh and others (J. V. Gupta, J.)

(4) After hearing the learned counsel for the parties at a great length, I am of the considered opinion that this revision is liable to be dismissed on the short ground that the building which was rented out to the tenant—petitioner to which he is entitled to be restored under section 13(4) of the Act, does not exist at the site because the objectors, after the sale of the property in their favour on February 15, 1977, have re-constructed it. It has been found as a fact by the executing Court that the property is not the same in which the petitioner was a tenant and that fact is proved from the statement of Keshav Chand, OW-4, who stated that at the time of the purchase of the property, only one room was there and the other rooms were in a dilapidated condition. He also stated that he had seen the building and the objectors had reconstructed the same. This being a finding of fact based on the proper appreciation of the evidence on the record, was not contested on behalf of the petitioner. Under the circumstances, the petitioner could not be allowed the restoration of the possession of the building which now exists at the site even if the doctrine of *lis pendens*, as contemplated under section 52 of the Transfer of Property Act, is at all attracted to the facts of the present case. Under the provisions of section 13(4) of the Act, a tenant is entitled to the restoration of the building which was rented out to him and was got vacated by the landlord from him on the ground that he *bona fide* required the same for his own use and occupation. However, if for certain reasons the said rented building ceases to exist after the tenant had vacated the same in pursuance of the ejection order, then the tenant cannot claim the restoration of the building which has been constructed subsequently after the demolition of the building originally rented out to him. Under section 13(4) of the Act, the interest of a tenant is a limited one. He is not entitled to any property as such, but is entitled only to the restoration of the possession of the building rented out to him from which he was ejected in pursuance of the order of eviction.

(5) There is another approach to the case. Now the objectors who had purchased the property from the previous landlord are themselves entitled to seek ejection of the tenant (petitioner) on the ground of their *bona fide* requirement for their own use and occupation. In case the tenant, at this stage, is allowed restoration of the building which has been reconstructed by the objectors, then, it will unnecessarily lead to multiplicity of proceedings. The only right of the tenant was to get restoration of the possession of the building from the landlord when he failed to occupy the same within one year from his dispossession in pursuance of the order of

ejection against him. The objectors purchased the property about four years after the actual possession was delivered to Major Prem Pal Singh, respondent No. 1, on August 14, 1973. It was the duty of the tenant to see that the building from which he was evicted, remained intact and no change was made therein. After all, the construction was not made in a day or two. When the objectors collected material for the re-construction of the building, the tenant could approach the civil Court and could get an injunction order restraining them not to change the nature of the building till the disposal of his restoration application. This was never done on his behalf. Even the vendees were not made parties in appeal filed before the Appellate Authority by the petitioner. Under the circumstances, the construction made by the objectors after the purchase of the said property by them cannot be said to be illegal or improper in any case. They constructed the building in good faith after having spent huge money thereon. Therefore, now they cannot be deprived of the property which they purchased for consideration. As observed earlier, the rights of a tenant under section 13(4) of the Act are very limited and because of the subsequent events, the tenant cannot be allowed to execute the decree for restoration of the building which does not exist at the site.

(6) After giving my thoughtful consideration to all the facts and circumstances of the present case, I do not find that the executing Court has acted illegally and with material irregularity in the exercise of its jurisdiction resulting in failure of justice as to call for any interference in revisional jurisdiction under section 115, Code of Civil Procedure.

(7) Consequently, this petition fails and is dismissed with costs.

N. K. S.

Before M. M. Punchhi, J.

MAHANT RAM NATH and others,—*Petitioners.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 5071-M of 1982.

October 6, 1982.

*Code of Criminal Procedure (II of 1974)—Sections 109 and 482—
Accused found loitering with a married woman in the middle of the*