



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Civil Revision No. 25 of 2006

Reserved on: 24.6.2025

Date of decision: 11.11.2025

Mohan Lal Goel & others.

...Petitioners.

Versus

Prabha Bhagra & others.

...Respondents.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes

For the Petitioners:

***Mr.Bhupinder Gupta, Senior Advocate,
alongwith Mr.Harshit Sharma, Advocate.***

For the Respondent:

***Mr.Sumit Sood, Advocate, for
respondents No. 1 to 3.***

***Mr.Rahul Sharma and Ms.Meera Devi,
Advocates, vice Mr.Deepak Gupta,
Advocate, for respondents No. 4 to 8.***

Vivek Singh Thakur, Judge

Present Revision Petition has been preferred, invoking revisional jurisdiction of this Court under Section 24 of the Himachal Pradesh Urban Rent Control Act, 1987 (for short 'Rent Act') against judgment dated 28.11.2005, passed by Appellate Authority, Fast Track, Shimla, in Rent Appeal No. 15-S/14 of 2004/2000, titled as Prabha Bhagra and others Vs. Jawala Devi and others, whereby order dated

26.11.1999, passed in Case No. 93/2 of 95/92, titled as Smt. Prabha Bhagra and others Vs. Smt. Jawala Devi and others, by Rent Controller-II, Shimla, has been reversed and tenant(s) have been declared in arrears of rent amounting to ₹40,558/- alongwith interest @9% per annum and and cost of petition and tenant(s) have also been directed to vacate the premises on the ground of impairing value and utility of demised premises by raising unauthorized construction.

2. Respondents No. 1 to 3 herein had filed petition for eviction as landlords, whereas petitioner No. 1 Jawala Devi (deleted before Appellate Authority being expired) was impleaded as tenant being successor of original tenant (respondent No. 1) Dalip Chand, whereas petitioners No. 2 to 9 were arrayed as respondents No. 3 and 5 to 11 being children of deceased Dalip Chand alongwith other two sons of Dalip Chand namely Amrit Lal Goel and Bhagwan Dass Goel, who were originally arrayed as respondents No. 2 and 4, but on account of death of Amrit Lal Goel, he was substituted by his legal heirs as respondents No. 2(a) to 2(e) in the Eviction Petition and they have been arrayed as proforma respondents No. 5 to 8 in present petition, whereas Bhagwan Dass Goel, who was original respondent No. 4 was deleted before the Appellate Authority vide order dated 24.4.2003. Rajesh Kumar Bhagra being co-owner with the petitioners/landlords was arrayed as proforma respondent No. 12 in the eviction petition and he is proforma respondent No. 9 in present petition.

3. For convenience, respondents No. 1 to 3 shall be referred as petitioners/landlords, whereas Rajesh Kumar Bhagra shall be referred as co-landlord and Jawala Devi shall be referred as tenant and others shall be referred as respondents.

4. Petitioners/landlords preferred an Eviction Petition under Section 14 of the H.P. Urban Rent Control Act, for eviction of tenant from half portion of garage situated near Victory Tunnel, by stating that respondent No. 1 Jawala Devi was tenant, with assertion that premises were originally let out to Dalip Chand husband of tenant/respondent Jawala Devi and after his death Jawala Devi became tenant. It was alleged that Jawala Devi in connivance with respondents No. 2 to 12 had made substantial additions, alterations including structural change in the premises and had impaired the value and utility of the premises. Three grounds for preferring eviction petition were taken. First ground was that tenant/respondent No. 1 had failed to make payment of arrears of rent alongwith interest from 1.4.1990 to 30.11.1991, amounting to ₹4,655/-. Second ground was that Jawala Devi in connivance with respondents No. 2 to 12 had made substantial additions and alterations including structural change in the premises in question without written consent of the petitioners/landlords or that of proforma respondent-co-landlord and this act had materially impaired the value and utility of the premises. Third ground was that tenanted premises was rented out to original tenant for running Chakki in the same, but after removing the said Chakki,

tenant/respondent No. 1 Jawala Devi changed the nature of the business, resulting into change of user without consent of landlords.

5. It is case of the landlords that in the tenanted premises, husband of tenant Jawala Devi who was father of respondents No. 2 to 11, namely Dalip Chand was inducted as tenant in the half portion of the garage alongwith Chakki installed therein in which premises, flour mill was being run. Tenant, firstly damaged the back portion of rented premises, covered the dry area earlier left in back portion of the premises and raised two additional stories on the roof portion of the tenanted premises, leading to extra load on the existing foundation of the building because of illegal and unauthorized construction which was raised without taking permission from the M.C. Shimla or Town and Country Planning Department or to the knowledge of petitioners/landlords, regarding which, to the knowledge of landlords, proceedings for demolition of unauthorized structure were initiated by the Municipal Corporation. The additional structure was raised without strengthening the already existing and damaged foundation and there was total change of lookout of the premises, whereas tenant had no right or locus to raise the construction or to do any additions or alteration in the premises without seeking written permission of landlords and tenants deprived the vested right of landlords to use the roof portion of the premises in reference and to raise any construction for their own use and occupation after seeking approval of the competent authority. It was also alleged

that tenant had also removed the middle wall, which was load bearing wall, resultantly putting the entire structure into danger of being collapsed.

6. It was claimed that in view of provisions of Rent Act after death of Dalip Chand Goel, the tenancy had devolved only upon respondent No. 1 Jawala Devi, however, children of Dalip Chand Goel were arrayed as respondents in the petition to avoid any legal objection in future on behalf of them, alleging denial of opportunity of being heard.

7. There are two sets of replies to the petition. Legal heirs of respondent No. 2 Amrit Lal Goel i.e. respondents No. 2(a) to 2(e) filed joint reply, whereas joint separate reply was filed on behalf of other respondents. Proforma respondent No. 12 did not contest the proceedings.

8. Crux of the reply filed by respondents is that there is no relationship of landlord and tenant between the parties and State of Himachal Pradesh had acquired the premises in reference, comprised in Khasra No. 574/5 in the year 1989 and thus petitioners have lost their right to claim them as landlords; rent up to 31.3.1990 has been paid to M/s Kulbhushan and Rajkumar Sood, which was a joint Hindu business concern by the respondents/tenants; for want of service of notice upon all legal heirs of Dalip Chand Goel, Eviction Petition was not maintainable; even de-acquisition of premises on 24.7.1991, no right in the suit premises is conferred on landlords' for acquisition of property in reference

by the State free from all encumbrances and charges and in fact State of H.P. is landlord after acquisition and thus Eviction Petition was not maintainable. It has been claimed that premises was acquired by the Government of Himachal Pradesh in July, 1989, whereas rent was paid up to 31.3.1990 and after acquisition of land, landlords had lost lien to the property and, therefore, there was no question of arrears of rent as well as making substantial additions and alterations, including structural change in the premises in reference without written consent of landlords. It was further claimed that premises in question from many years past was three storeyed, including the portion in occupation of landlords is a composite one building. It was further stated that one time flour mill was being run by Dalip Chand about 10 years ago with denial that tenanted premises was damaged by respondents as alleged by landlords. It was claimed that there was no change of user of the premises.

9. In reply filed by legal heirs of respondent No. 2 Amrit Lal Goel, it was claimed that tenancy was in the name of Amrit Lal Goel and Mohan Lal Goel, who were carrying business in the premises and after death of Amrit Lal Goel, tenancy right in the premises devolved upon his legal heirs and, therefore, other respondents were unnecessarily joined in the petition. It was alleged that landlords had failed to properly allege the so called additions and alterations to the premises. It was also claimed that premises in reference stood acquired by the State of H.P. for widening of the road and landlords had already received compensation

for acquisition of the same and thus they had no locus to maintain the petition. In alternative it was pleaded that in case petitioners were found to be owners/landlords of the property, then tenancy of the premises was with respondent No. 3 Mohan Lal and legal heirs of respondent No. 2 Amrit Lal Goel and, therefore, other legal heirs of Dalip Chand were not necessary party. However, it was re-iterated that there was no relationship of landlord and tenant between the parties.

10. In rejoinder, landlords had re-affirmed their claim in terms of Eviction Petition.

11. Landlords have examined five witnesses, whereas legal heirs of Dalip Chand Goel, other than legal heirs of Amrit Lal Goel, had examined three witnesses, whereas Saroj Bala, wife of Amrit Lal Goel had appeared as a witnesses as RW-2/1 on behalf of legal heirs of Amrit Lal Goel.

12. Landlords had also placed reliance upon Ex. PW-3/A demolition order passed by Municipal Commissioner, PW-4/A Technical Report and Ex. PW-4/B map of unauthorized construction prepared by PW-4 R.B. Sexana, retired Executive Engineer, partition deed Ex. PW-5/A amongst the joint Hindu family of Hans Raj, the original owner of the premises, valuation reports Ex. PW-5/B and Ex. PW-5/C attached with partition deed Ex. PW-5/A, sale deed Ex. PW-5/D, executed by Anil Kumar Goel son of Hans Raj, in favour of Kulbhushan (predecessor of petitioners/landlords) and Rajesh Kumar, brother of Kulbhushan

alongwith jamabandi Ex. PW-5/E and tatima Ex. PW-5/F attached with the sale deed.

13. Respondents/tenants had placed reliance upon Report of expert Ex. PW-2/A prepared by RW-2 B.C. Sharma on behalf of Him Engineers and Architects Association and map Ex. PW-2/B attached therewith.

14. Petitioners/landlords have also placed reliance upon jamabandi Ex. PX-1, copy of judgment dated 12.5.1999 passed in Civil Suit No. 195/1 of 1996/92 titled as Amrit Lal Mohan Lal Vs. M.C. Shimla, Ex. PX-2, copy of plaint in the aforesaid suit and PX-3, copy of award dated 1.7.89 Ex. PX-4.

15. Rent Controller had framed following issues:-

- “1. *Whether the relationship of landlord and tenant exists between the parties?*
OPP
2. *Whether the respondent No. 1 is in arrears of rent, if so, to what extent?*
OPP
3. *Whether the respondent No. 1 in connivance with respondents No. 2 to 13 was made material addition and alteration in the premises so as to materially effect the value and utility of the premises?*
OPP
4. *Whether the respondent No. 1 has changed the use of the premises without the consent of the petitioner?*
OPP
5. *Whether the petition is not maintainable as alleged in para 2 of the preliminary objection?*
OPR
6. *Whether the premises have been acquired by the State of H.P., if so, to what effect?*
OPR

7. *Whether the tenancy of the premises was in the name of Amrit Lal Goel and Mohan Lal Goel and the tenancy after the death of Amrit Lal husband inherited by his legal heirs, if so, to what effect?*
OPR

8. *Whether the petition lacks better and material particulars?*
OPR

9. *Relief."*

16. After taking into consideration material on record, Rent Controller had concluded that the premises were acquired by the State of Himachal Pradesh in the year 1989 and some portion of which was de-acquisitioned in 1991 and, therefore, petitioners/landlords had no locus standi to file the petition on the cause of action accrued in the year 1990 without making State of Himachal Pradesh as party and there was no relationship of landlord and tenant between the parties in the year 1990 and thus tenants were not in arrears of rent as alleged in the petition and without making State of H.P. as party, it cannot be held that respondents had raised unauthorized construction to impair the value and utility of the demised premises and there was no evidence to show that respondents had changed user of demised premises, and accordingly, all issues were decided against the petitioners/landlords and Eviction Petition was dismissed.

17. In appeal preferred by landlords, Appellate Authority had formulated following points for determination:-

"1. *Whether appellants have title to the demised premises?*

2. *Whether there existed relationship of landlord and tenant, and if so, who are liable?*
3. *Whether respondents have impaired the value and utility of the demised premises by raising unauthorised construction?*
4. *Whether respondents are in arrears of rent, if so, to what amount?*
5. *Relief."*

18. Considering the material on record, it has been held by the Appellate Authority that petitioners were having title on the demised premises and relationship of landlord and tenant was in existence and respondents/tenants had impaired the value and utility of the demised premises by raising unauthorized construction and they were also in arrears of rent for ₹40,558/- and accordingly impugned judgment was passed for eviction of tenants.

19. Present petition has been preferred against the judgment of Appellate Authority with the plea that Appellate Authority has committed a mistake in appreciating the evidence on record in its right perspective as, there was no cogent evidence available on record regarding existence of any relationship of landlord and tenant between the parties; misreading of material evidence by Appellate Authority is amounting to illegal exercise of jurisdiction as wholly irrelevant decisions have been considered for deciding the controversy involved in present proceedings; technical report of PW-4 R.B. Sexana has been wrongly relied upon and technical report of RW-2 B.C. Sharma has been wrongly discarded;

inference regarding existence of single story structure is without any legal evidence adduced by the landlords as the notice issued by Municipal Corporation was not a conclusive proof; and conclusion of impairing the value and utility of building is also without any evidence on record.

20. Supreme Court in ***Rukmini Amma Saradamma vs. Kallyani Sulochana and others***, reported in **(1993) 1 SCC 499**, referring its earlier pronouncement in ***Rai Chand Jain vs. Chandra Kanta Khosla, (1991) 1 SCC 422***, with respect to scope of revisional power under Section 20 of Kerala Rent Control Act, which is similar to H.P. Rent Act, has observed that notwithstanding the fact that Section 20 of the Act conferring revisional jurisdiction of the High Court is widely worded, such a jurisdiction cannot be converted into an appellate jurisdiction.

21. With respect to scope of jurisdiction and revisional jurisdiction and the extent of power which High Court can exercise in a Revision filed under Section 24(5) of the Rent Act, Five Judges' Constitution Bench of Supreme Court in Hindustan Petroleum Corporation Limited vs. Dilbahar Singh, (2014) 9 SCC 78, has observed as under:-

"28. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the 'appellate jurisdiction' and 'revisional jurisdiction' is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice-versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to

the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves re-hearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the tribunal/appellate authority, the decision of the revisional court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.

29. *With the above general observations, we shall now endeavour to determine the extent, scope, ambit and meaning of the terms "legality or propriety", "regularity, correctness, legality or propriety" and "legality, regularity or propriety" which are used in three Rent Control Acts under consideration.*

29.1. *The ordinary meaning of the word 'legality' is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal.*

29.2. *The term 'propriety' means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition conformity with requirement; rules or principle, rightness, correctness, justness, accuracy.*

29.3. The terms 'correctness' and 'propriety' ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, 'correctness' is compounded of 'legality' and 'propriety' and that which is legal and proper is 'correct'.

29.4. The expression "regularity" with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play.

30. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction *suo motu* unless so provided expressly. None of these statutes confers on revisional authority the power as wide as that of appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the Trial Court/Rent Controller and Appellate Court/Appellate Authority for re-hearing of the issues raised in the original proceedings.

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43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re- appreciation of the evidence, its view is different from the Court/Authority below. The consideration or

examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

22. Present Revision Petition is to be decided keeping in view the aforesaid exposition of law with respect to scope of revisional jurisdiction of this Court.

23. Perusal of demolition order Ex. PW-3/A clearly depicts that there was a single storeyed structure in occupation of tenant of Kulbhushan

and Rajesh Kumar, whereupon two unauthorised floors were constructed by the occupants, which were ordered to be demolished by the Commissioner, M.C. Shimla and the suit preferred against the said order was dismissed by the Civil Court. Partition deed Ex.PW-1/A reflects that property owned by M/s Tulsi Ram Hans Raj, was partitioned between Hans Raj S/o Tulsi Ram, Kuldeep Kumar S/o Hans Raj and Anil Kumar son of Hans Raj on 28th March, 1977. The property in reference was given to Anil Kumar son of Hans Raj. Alongwith partition deed valuation reports Ex. PW-5/B and Ex.PW-5/C were enclosed. In valuation reports Ex.PW-5/B dated 28.2.1977 and Ex.PW-5/C dated 28.2.1977, brief description of the property has been given as single storey. One room having Chakki was on the spot in the premises in reference. Sale deed dated 17.10.1979 (Ex.PW-5/D) depicts that Anil Kumar Goel son of Hans Raj sold the premises in reference to Kulbhushan and Rajesh Kumar both sons of Kishori Lal with clear averments therein that there was a garage alongwith land which was purchased by the Firm M/s Tulsi Ram and Hans Raj from one Dr. Kedar Nath vide sale deed dated 12.12.1949 and the said garage had been partitioned into two portions. One portion was lying vacant and other portion was having atta ckakki installed therein and the said portion alongwith chakki was on lease with Dalip Chand Aggarwal proprietor of M/s Amrit Lal Mohan Lal on monthly rent basis at the rate of ₹200/- per month. The sale deed clearly depicts that there

was a garage having atta chakki and the same was leased/rented to Dalip Chand Aggarwal, but not to the firm and from all these documents it is apparent that there was only a single storey structure rented to Dalip Chand Aggarwal predecessor of the respondent/tenant. From jamabandi Ex. PX-1 it is also apparent that there is one storey kachi shop on the suit premises. From the judgment PX-2, it is apparent that construction was raised by the occupants after 1990. In Award Ex. PX-4 at Sr. No. 13 claim of Amrit Lal son of Dalip Chand proprietor of Deepak Industries and claim of M/s Tulsi Ram and Hans Raj with respect to Khasra No. 574/5 and 574/8 has been considered by the Land Acquisition Officer and in this document, it is clearly mentioned that there existed a single storey garage and building on Khasra No. 574/5 and 574/8, therefore, claim of respondent/tenant on the basis of technical report placed on record as RW-2/A and map Ex. RW-2/B is falsified, rather technical report Ex. PW-4/A and map attached therewith Ex. PW-4/B have been proved to be genuine.

24. It is also admitted fact, as apparent from the oral evidence as well as reply filed by the respondents that rent was being paid till March, 1990. It is admitted case that acquisition took place in the year 1989 and thereafter it was de-acquisitioned in the year 1991. After acquisition tenant(s) continued to pay rent to the landlords, therefore, there is acquiescence to the status of the landlords in the act, conduct and deposition of the respondents/tenants. Thus plea of the

respondents that after acquisition status of landlords and tenant was not in existence is not sustainable. Even otherwise after de-acquisition of the land the status of parties including the owners/landlords and the tenants was to be maintained status quo ante as it was existing prior to the acquisition. Therefore, also plea of the respondents is not sustainable that there was no relationship of landlords and tenant between the parties.

25. From the material placed on record including technical report Ex. PW-4/A, it has been established on record that value and utility of the demised premises has been impaired by raising unauthorized construction and the said construction is not only without permission of Municipal Corporation, but also dangerous for existing single storey structure whereupon two storeys have been constructed without getting the map and plan sanctioned and strengthening the foundation of single storey structure.

26. It is well settled that if there are co-owners or co-landlords of the suit premises, then any co-owner or co-landlord can file a suit for eviction against the tenant and it is not necessary that all owners/landlords should join in filing the eviction suit against the tenant.

(See **Kanaklata Das & others Vs. Naba Kumar Das & others, 2018 (2) SCC 352** and **Kasthuri Radhakrishnan & Ors. Vs. M. Chinniyar & Another, 2016 (3) SCC 296**).

27. This High Court in **Jagat Ram Chauhan Vs. Smt. Avinash Partap and another**, reported in **Latest HLJ 2014 (HP) 420**, after considering various pronouncements of the Apex Court, has held that landlord is the best judge of his residential requirement and the suitability of the alternative premises has to be determined on the basis of convenience of the landlord and the members of his family and also considering totality of circumstances, law does not demand that the landlord be prevented from living in comfort in his own house and be forced to live in inadequate premises in order that tenant's occupancy of tenanted premises be protected and it further held that the landlord can choose either or any of two or more tenanted premises and the choice of landlord is not to be questioned by tenant once the landlord proves his bona fides to the objective to the satisfaction of the Court on facts and the choice of accommodation which would satisfy his requirement should be left to landlord's subjective choice and the Court cannot impose its own choice upon him. It is further held that the terms "his own occupation" for his "own use" and "for occupation of himself" are not to be assigned a narrow meaning and these phrases include requirements of members of family of landlord and those dependent upon him and also that in such eventuality building permission is not condition precedent when the landlord is seeking eviction of the tenant in order to make any repairs, which cannot be carried out without the eviction of tenant. I am also in agreement with judgment of Punjab and Haryana High Court pronounced

in **Vijay Kumar Vs. Rajeev Kumar Murria** reported in **2012(1) Civil Court Cases 428 (P&H)**, wherein it is held that landlord is the best judge of his need and tenant cannot dictate terms with regard to suitability of the accommodation.

28. Supreme Court in **Pasupuleti Venkateswarlu vs the Motor & General Traders, (1975) 1 SCC 770**, has held as under:-

6 "... ..It is basic to our processual jurisprudence that the right to relief must be judged to exist as on date a suitor institutes the legal proceeding... .."

29. Supreme Court in **Rajeshwar and others vs. Jot Ram and another, (1976) 1 SCC 194: AIR 1976 SC 49**, referring **Pasupuleti Venkateswarlu's** case; and **Bhajan Lal vs. State of Punjab, (1971) 1 SCC 34**; has held as under:-

"6. The philosophy of the approach which commends itself to us is that a litigant who seeks justice in a perfect legal system gets it when he asks for it. But because human institutions of legal justice function slowly, and in quest of perfection, appeals and reviews at higher levels are provided for, the end product comes considerably late. But these higher Courts pronounce upon the rights of parties as the facts stood when the first Court was first approached. The delay of years flows from the infirmity of the judicial institution and this protraction of the Court machinery shall prejudice no one. *Actus curiae neminem gravabit*(1). Precedential support invoked by the appellant's counsel also lets him down provided we scan the fact situation in each of those cases and the legal propositions therein laid down.

7. *The realism of our processual justice bends our jurisprudence to mould, negate or regulate reliefs in the light of exceptional developments having a material and equitable import, occurring during the pendency of the litigation so that the Court may not stultify itself by granting what has become meaningless or does not, by a myopic view, miss decisive alterations in fact-situations or legal positions and drive parties to fresh litigation whereas relief can be given right here. The broad principle, so stated, strikes a chord of sympathy in a court of good conscience. But a seeming virtue may prove a treacherous vice unless judicial perspicacity, founded on well-grounded rules, studies the plan of the statute, its provisions regarding subsequent changes and the possible damage to the social programme of the measure if later events are allowed to unsettle speedy accomplishment of a restructuring of the land system which is the soul of this which enactment. No processual equity can be permitted to sabotage a cherished reform, nor individual hardship thwart social justice. This wider perspective explains the rulings cited on both sides and the law of subsequent events on pending actions.*

8. *In P. Venkateswarlu v. Motor & General Traders (2) this Court dealt with the adjectival activism relating to post institution circumstances Two propositions were laid down. Firstly, it was held that 'it is basic to our processual jurisprudence that the right to relief -must be judged to exist as on the date a suitor institutes the legal proceeding'. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, as explained earlier, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice*

or rights crystallized in the initial cause of action. This position finds support in Bhajan Lal v. State of Punjab, (1971) 1 SCC 34."

30. In ***Shantilal Thakordas vs. Chimanlal Maganlal Teiwala***, reported in **1976 4 SCC 417**, a larger Bench of the Supreme Court overruling its earlier decision rendered in ***Phul Rani vs. Naubat Rai Ahluwalia***, reported in **(1973)1 SCC 688**, has held that after death of original landlord, senior member of his family takes his place and is well competent to continue the suit for eviction in his occupation and occupation of other members of the family. A similar view was taken by the Apex Court in ***Shakuntla Bai and others vs Narayan Dass and others reported in (2004)1 RCR (Rent) 580***.

31. In ***State of U.P. and others vs. Harish Chandra and others, (1996) 9 SCC 309***, Supreme Court has observed as under:-

"... .. Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition... .."

32. The Supreme Court in ***Kamleshwar Prasad vs. Pradumanju Agarwal*** reported in **(1997) 4 SCC 413** has held that need of landlord for premises in question must exist on the date of application for eviction which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom.

33. In **Gaya Prasad vs. Pradeep Srivastava** reported in **(2001)2 SCC 604** it has been held by the Supreme Court that crucial date for deciding as to the bonafides of requirements of landlord is the date of his application for eviction with observation that where landlord had instituted eviction proceedings for bonafide requirements of his son who wanted to start a clinic, but during continuation of litigation for a long period, son joined the Provincial Medical Services and posted at different places, the said subsequent event of joining of service by son was not taken into consideration on the ground that crucial date was date of filing of eviction petition.

34. The Supreme Court in **G.C. Kapoor vs. Nand Kumar Bhasin** reported in **(2002)1 SCC 610**, has held that bonafide need of landlord has to be examined as on the date of institution of the proceedings and if a decree for eviction is passed and death of landlord occurs during pendency of appeal preferred by tenant, it will make no difference as his heirs are fully entitled to defend the estate.

35. The Apex Court, in its judgment in case **D. Sasi Kumar Vs. Soundrarajan** reported in **(2019) 9 SCC 282**, overruling the conclusion of the High Court that bonafide occupation as sought should be not only on the date of the petition but it should continue to be there on the date of final adjudication of rights, has held that when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process if the benefit is declined it would only

encourage the tenants to protract the litigation so as to defeat the right, and further that if as on the date of filing petition the requirement subsists and it is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end.

36. In the light of aforesaid pronouncements it is more than settled that right of landlords is to be adjudicated on the basis of date on which action is instituted by the landlords.

37. During pendency of present petition, an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure bearing CMP No. 7588 of 2018 has also been filed by respondents/tenants for placing additional evidence on record, i.e. copy of mutation evidencing private partition between the parties effected in the year 2001 and sale deed dated 27.12.2017 executed by Rajesh Kumar Bhagra co-landlord in favour of respondent Mohan Lal with claim that now status of Mohan Lal has become that of owner of the premises in question and thus petition for eviction has become infructuous due to subsequent events, as there is no right, title or interest vested with the petitioners/landlords qua the portion purchased by Mohan Lal and thus order of eviction passed by Appellate Authority has become inexecutable. It has been claimed that factum of partition was not in the knowledge of applicant Mohan Lal prior to year 2017 when Rajesh Kumar Bhagra expressed his intention to sell his share in the property in dispute.

38. In response to the application, maintainability of the application has been disputed with submission that additional evidence proposed to be placed on record is not relevant for adjudicating the real matter in controversy between the parties, as the status of petitioners/landlords has not been changed and they are landlords, whereas Jawala Devi was tenant and it has been contended that subsequent sale deed by Rajesh Kumar is not having any impact on the claim of petitioners/landlords against the tenant.

39. Present Eviction Petition was preferred in the year 1992 and Appellate Authority had passed eviction order on 26.11.1999, at that time there was no partition or sale deed in existence as mentioned in the application CMP No. 7588 of 2018, filed for additional evidence. It is also apt to notice that Rajesh Kumar who has sold his share has not contested the case at any stage.

40. Even otherwise, for the definition of "tenant" provided under Section 2(j) of H.P. Urban Rent Control Act and expression "landlord" defined in Section 2 of the H.P. Urban Rent Act, the document proposed to be placed on record by way of additional evidence are not going to have any impact on the real controversy between the parties as well as status of landlord and tenant between the petitioners/landlords and Dalip Chand and thereafter his wife Jawala Devi, because after death of Jawala Devi all others are strangers occupying the premises in reference unauthorisedly who are liable to be evicted.

41. The expression "landlord" in Section 2 of the H.P. Urban Rent Control Act includes persons receiving rent for the time being. It is admitted case of the respondents that they were paying rent till 31.3.1990 to the petitioners/landlords or to their predecessors. It is not in dispute that petitioners are legal heirs and successors-in-interest of Kulbhushan, who was admittedly one of the landlords.

42. Plea of respondents, that after death of Dalip Chand, original tenant, his all Class-1 heirs have inherited the tenancy in succession and were entitled to be treated as tenants collectively and proceedings for eviction should have been initiated against all legal heirs/representatives of deceased Dalip Chand, is not sustainable because of specific provisions contained in Explanation-I of Section 2(j) of H.P. Urban Rent Control Act, 1987 wherein definition of "tenant" along with Explanation(s) has been provided as under:-

"2(j) "tenant" means any person by whom or on whose account rent is payable for a residential or non-residential building or rented land and includes a tenant continuing in possession after termination of the tenancy, a deserted wife of a tenant who has been or is entitled to be in occupation of the matrimonial home or tenanted premises of husband, a divorced wife of a tenant who has a decree of divorce in which the right of residence in the matrimonial home or tenanted premises has been incorporated as one of the conditions of the decree of divorce and in the event of the death of such person such of his heirs as are mentioned in Schedule-I to this Act and who were ordinarily residing with him or carrying on business in the premises at the

time of his death, subject to the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or a person to whom the collection of rent or fees in a public market, cart stand or slaughter house or of rents for shops has been farmed out or leased by a Municipal Corporation or a Municipal Council or a Nagar Panchayat or a Cantonment Board;

Explanation-I.- The order of succession in the event of death of the person continuing in possession after the termination of his tenancy shall be as follows:—

- (a) firstly, his surviving spouse;*
- (b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased persons as a member of his family upto the date of his death;*
- (c) thirdly, his parent(s), if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son, daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death; and*
- (d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parent(s) of the deceased person or if such surviving spouse, son, daughter or parent(s), or any of them, did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death:*

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family upto the date of his death and was dependent on the deceased tenant:

Provided further that a right to tenancy shall not devolve upon a successor in case he or his spouse or any of his dependent son or daughter is owning or occupying a premises in the urban area in relation to the premises let.

Explanation-II.- The right of every successor, referred to in Explanation-I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs; and.]”

43. From aforesaid provisions, it is quite clear that in the event of death of a person/tenant continuing in possession his tenancy shall firstly devolve upon his surviving spouse, and in absence of first, secondly upon his son and daughter or both if there is no surviving spouse or if the surviving spouse did not ordinarily live with the deceased person as a member of his family upto the date of his death; thirdly in absence of first and second, on parents and in absence of first, second and third, fourthly on daughter-in-law etc. Explanations clearly provide order of succession of tenancy. In the present case, Jawala Devi was alive and living with her husband upto the date of his death and therefore, she was only entitled for succession of tenancy and others legal heirs, mentioned in Clauses (b) (c) and (d) of Explanation-I, were not entitled for succession of tenancy of Dalip Chand. As per Explanation-II, right of every successor referred to in Explanation-I, shall be personal to him and on the death of said successor tenancy will not devolve upon his any legal heirs. In view of unambiguous provisions of Rent Act plea regarding

necessity of issuing notice to all legal heirs of Dalip Chand and claim of them that they all are tenants, is not sustainable.

44. Above referred explanation-II, clearly mandates that right to succeed tenancy shall be personal to the successor and on death of successor, it shall not devolve on any of his legal heirs. In present matter, Jawala Devi expired during pendency of present petition and thereafter she was deleted vide order dated 5.1.2016. After her death, other respondents have no justifiable claim for continuing in possession of the property under the garb of tenancy created in favour of Dalip Chand, which was succeeded by his wife Jawala Devi after his death. Therefore, on this count also present petition deserves to be dismissed and respondents are liable not only to be evicted and also to pay use and occupation charges for their unauthorized possession on the prevailing market rate in the same area where the premises in reference is situated.

45. There is force in the objection taken in the reply to the aforesaid application. In view of nature of lis, evidence on record and discussion supra as well as plea taken in the reply, it is apparent that additional evidence proposed to be placed on record is not relevant for adjudication of present Revision Petition, and, accordingly, the same is dismissed.

46. In present petition vide order dated 3.5.2006 passed in CMP No. 82 of 2006, interim order dated 16.3.2006 was confirmed, whereby dispossession of respondent was stayed with rider that arrears

of rent uptill 15th May, 2006, if already not paid, shall be paid by respondents No. 1 to 3 and 9 and they shall also pay monthly charges for use and occupation, effective from May, 2006, at the rate of ₹1000/- per month, month by month, every month by 15th day of every month by remitting the same through account payee cheque and in default of payment of any one month, stay order shall cease to operate.

47. In May 2023, an application bearing CMP No. 10892 of 2024 has also been filed by the petitioners/landlords for modifying the order dated 3.5.2006 for enhancing the use and occupation charges at the rate of ₹75,000/- per month on the ground that order dated 3.5.2006 was passed 17 years back and respondents/tenants are in possession of rented accommodation in a commercial viable place measuring 140 Sq. feet, whereas as on date prevailing rent/use and occupation charges of similar accommodation in the same area is much higher than the rate prevailing in the year 2006 and as such respondents/tenants are liable to pay use and occupation charges at the rate of ₹75,000/- per month, as the Eviction Petition was filed in January, 1992 and a considerable time has passed thereafter. It has been claimed that prevailing rent/use and occupation charges of the similar accommodation is not less than ₹600/- per Sq. feet per month. To substantiate the plea, information received through Right to Information Act, 2005 about allotment of small shop measuring about 50 Sq. feet near Old Bus Stand, Shimla by Municipal Corporation, Shimla to one Gulat Ram at annual lease of ₹4,85,000/-, as

indicated in communication dated 21.1.2021 issued by Municipal Corporation, Shimla, has been placed on record.

48. In response to the aforesaid CMP No. 10892 of 2024, filed for enhancement of use and occupation charges, it has been claimed that order dated 3.5.2006 has attained finality and Rakesh Kumar Bhagra has sold the portion of the property to one of the respondents i.e. Mohan Lal and, therefore, petitioners/landlords are not entitled for enhancement of use and occupation charges, and the claim of ₹75,000/- per month is fictitious, imaginary, absolutely arbitrary and exorbitant and has no rationale or legal sanctity and the application has been filed with ulterior motive to exert pressure on non-applicants/petitioners to vacate the premises.

49. Plea of respondents/tenants that use and occupation charges are not liable to be increased from 3.5.2006, i.e. from retrospective date, has force in it as the landlords have placed on record information regarding annual lease granted by the Municipal Corporation in the year 2021 and the application has been filed in the year 2023, therefore, use and occupation charges, at enhanced rate, shall be payable prospectively.

50. Taking into consideration material placed on record in CMP No. 10892 of 2024 and reply filed thereto, it is apparent that Municipal Corporation, Shimla has rented out premises of 50 Sq. meters at the rate of ₹4,85,000/- per annum and, therefore, on the same road rate of lease

per Sq. feet becomes ₹808/-, whereas applicants/landlords have claimed use and occupation charges at the rate of ₹535/- per Sq. feet. There is no rebuttal to the material placed on record by the landlords and even if use and occupation charges are calculated on lower side at the rate of ₹500 per Sq. feet, then also monthly use and occupation charges becomes ₹70,000/- per month and, therefore, respondents/tenants are liable to pay use and occupation charges at the rate of ₹70,000/- per month from the date of filing of application CMP No. 10892 of 2023, i.e. 1st May, 2023.

51. Reliance has been placed on behalf of respondents/petitioners on judgments of the Apex Court in ***Om Pal Vs. Anand Swarup (dead) by LRs., (1988) 4 SCC 545; Waryam Sigh Vs. Baldev Singh (2003) 1 SCC 59*** and learned Single Judge of this Court in ***Civil Revision No. 196 of 2007***, dated 19.8.215, titled as ***Smt. Sudarshana Devi Sood Vs. M/s Super Sanitation, 52, The Mall Shimla and others.*** I am of the opinion that in view of above discussion, these decisions are of no help to the respondents/petitioners.

52. From the aforesaid discussion, it is apparent that Appellate Authority has appreciated the pleadings and material on record in its right perspective and arrived at legal and just conclusion and there is no illegality, irregularity and perversity in impugned judgment, thus no interference in impugned judgment is warranted.

53. Accordingly present petition is dismissed with direction to the respondents/tenants to vacate the premises in reference on or before 31st December, 2025 and also to pay use and occupation charges till 30.4.2023 as determined vide order dated 3.5.2006 and thereafter at the rate of ₹70,000/- per month w.e.f. 1st May, 2023 till the vacation of the premises in reference.

Petition is disposed of in aforesaid terms alongwith pending applications.

11th November, 2025
(Keshav)

(Vivek Singh Thakur),
Judge.