

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 172 of 2014

Reserved On: 11.3.2025

Date of decision: 22.4.2025

Roshan Lal Bhardwaj.

...Petitioner.

Versus

Ashok Sud & another.

...Respondents.

Coram

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

Whether approved for reporting?¹ Yes

For the Petitioners : Mr.Chandernarayana Singh, Advocate.

For the Respondents: Mr. Arjun Lall and Mr.Aakash Thakur, Advocates.

Vivek Singh Thakur, Judge (Oral)

Petitioner-tenant has approached this Court for setting aside order dated 30.6.2014 passed by Rent Controller-1 Shimla in case No. 14-2 of 2014, titled as Ashok Sud and another Vs. Roshan Lal Bhardwaj, whereby application preferred by tenant under Section 14(3)(c) of the H.P. Urban Rent Control Act, 1987 (herein after referred to as the "Act") has been dismissed which was filed seeking direction to the landlord to put him to time schedule with regard to commencement of construction of house within a period of six months from 30.6.2014 and complete the same within a further

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

period of one year after obtaining statutory permission and also issue direction to the landlord to re-induct the tenant after one month of the construction of building in the same place, location and equivalent area to the area which is in occupation of tenant before passing of eviction order by the Rent Controller.

2. Parties to the lis are being referred to their status, i.e. landlord and tenant for convenience.

3. Undisputed facts in present matter are that landlord had preferred Rent Petition No. 47-2 of 2010/2008 on 11.8.2008 for eviction of tenant on the ground of bonafide requirement for the purpose of rebuilding/re-construction after demolition of existing building which was not possible without the premises being vacated and vacant possession thereof being handed over to the landlord by the tenant. The said petition was allowed vide order dated 30.6.2011 evicting the tenant from the premises in reference on the ground of bonafide requirement of re-building and re-construction, and by referring judgment passed by the Supreme Court in ***Harrington House School Vs. S.M. Ispahani and another AIR 2002 SC 2268***, it was ordered that eviction of the tenant from the premises shall be carried out only on production of duly sanctioned plan by the landlord before the Executing Court.

4. The aforesaid eviction order dated 30.6.2011 was assailed by tenant by filing Appeal No. 40-S/14 of 2011 before the Appellate Authority, wherein on 3.7.2012, following order was passed:-

"1. The applicant shall deposit use and occupation charges at the rate of Rs.6000/- per month from 1.7.2011 onwards, within a period of one month from today with learned Rent Controller, Shimla/the respondent.

2. That he shall deposit the use and occupation charges of each month, at the rate of Rs.6000/- per month before the 10th day of next calendar month, with the learned Rent Controller, Shimla/the respondent.

3. The sum so deposited shall be disbursed to the landlord and shall be subject to the final result of the appeal."

5. The aforesaid order dated 3.7.2012 was assailed by the landlord by filing Civil Revision No. 100 of 2012 in this High Court, which was decided on 27.12.2012.

6. In the meanwhile landlord had also preferred Execution Petition bearing case No. 17-10 of 2011, wherein objections were preferred by the tenant which were dismissed by the Executing Court (Rent Controller) vide order dated 27.7.2013. This order was assailed by tenant by filing Revision Petition No. 4034 of 2013, which was decided by this High Court on 4.10.2012, wherein referring pronouncement of the Supreme Court in ***Hari Dass Sharma Vs. Vikas Sood and others, 2013(5) SCC 243*** and judgment passed by this High Court in ***Civil Revision No. 49 of 2006***, dated 8.7.2013, Revision Petition preferred by the tenant was dismissed with clarification that it shall be open to the tenant to apply for re-entry into the

building in accordance with proviso to clause (c) of Section 14(3) of the Rent Act read in terms of the judgment of the Supreme Court in ***Hari Dass Sharma's*** case and judgment of the High Court in Civil Revision No. 49 of 2006.

7. In ***Hari Dass Sharma's*** case condition imposed upon the landlord, for executing the eviction order against the tenant, to obtain sanction from the Municipal Corporation and to produce the sanctioned plan for approval of building plan before the Executing Court, was set aside with following terms:-

"17. In fact, the only question that we have to decide in this appeal filed by the appellant is whether the High Court could have directed that only on the valid revised/renewed building plan being sanctioned by the competent authority, the order of eviction shall be available for execution. The High Court has relied on the decision of this Court in Harrington House School v. S.M. Ispahani & Anr. (supra) and we find in that case that the landlords were builders by profession and they needed the suit premises for the immediate purpose of demolition so as to construct a multi-storey complex and the tenants were running a school in the tenanted building in which about 200 students were studying and 15 members of the teaching staff and 8 members of the non-teaching staff were employed and the school was catering to the needs of children of non-resident Indians. This Court found that although the plans of the proposed construction were ready and had been tendered in evidence, the plans had not been submitted to the local authorities for approval and on these facts, R.C. Lahoti, J, writing the judgment for the Court, while refusing to interfere with the judgment of the High Court and affirming the eviction order passed by the Controller, directed that the landlords shall submit the plans of reconstruction for approval of the local authorities and

only on the plans being sanctioned by the local authorities, a decree for eviction shall be available for execution and further that such sanctioned plan or approved building plan shall be produced before the executing court whereupon the executing court shall allow a reasonable time to the tenant for vacating the property and delivering the possession to the landlord and till then the tenants shall remain liable to pay charges for use and occupation of the said premises at the same rate at which they are being paid.

18. *In the present case, on the other hand, as we have noted, the Rent Controller while determining the bonafides of the appellant-landlord has recorded the finding that the landlord had admittedly obtained the sanction from the Municipal Corporation, Shimla, and has accordingly passed the order of eviction and this order of eviction has not been disturbed either by the Appellate Authority or by the High Court as the Revision Authority. In our considered opinion, once the High Court maintained the order of eviction passed by the Controller under Section 14(4) of the Act, the tenants were obliged to give vacant possession of the building to the landlord and could only ask for reasonable time to deliver vacant possession of the building to the landlord and hence the direction of the High Court that the order of eviction could only be executed on the revised plan of the building being approved was clearly contrary to the provisions of Section 14(4) of the Act and the proviso thereto.*

19. *We accordingly allow the appeals, set aside the directions in Para 27 of the impugned judgment of the High Court, but grant time to the respondents to vacate the building within three months from today. We make it clear that it will be open for the respondents to apply for re-entry into the building in accordance with the proviso to clause (c) of Section 14(3) of the Act introduced by the Amendment Act, 2009. Considering, however, the peculiar facts and circumstances of the cases, there shall be no order as to costs."*

8. In Civil Revision No. 49 of 2006, present land lord and tenant were not parties but it was directed to be read in present case. It was disposed of by this High Court with following operative portion of the order:-

“The tenant is directed to hand over the vacant possession of the premises to the landlord within a period of three months. Thereafter, the landlord shall commence the construction within a period of six months and complete the same within a further period of one year after obtaining the statutory permissions. The tenant shall be re-inducted on the basis of the observations made hereinabove after one month of the construction of the building. The tenant should be re-inducted in the same place, location and area should be equivalent to the area which was in occupation of the tenant before the orders passed by the learned Rent Controller.”

9. The judgment dated 4.10.2013 passed by this High Court in Civil Revision No. 4034 of 2013 was assailed by the tenant herein in the Supreme Court by filing Special Leave to Appeal (Civil) No. 36864 of 2013, titled as Roshan Lal Bhardwaj Vs. Ashok Sud & Another which was dismissed vide order dated 13.1.2014, in the following terms:-

“However, on the request of learned counsel for the petitioner, the petitioner is allowed to occupy the premises up to 30th June, 2014 subject to filing of usual undertaking within four weeks and following conditions”-

1. The petitioner shall pay arrears of rent, if any, in favour of respondents and deposit the amount in the account of the respondents, number of which may be provided by the respondents or by way of bank draft within two months;

2. The petitioner shall pay occupancy charges for the month of January, 2014 onwards @ Rs.6,000/- (Rupees Six Thousand) per month as directed by the High Court by the 7th day of the subsequent month;

3. *The petitioner shall not create any third party interest on the suit premises.*

On failure of any of the conditions, it will be open to the respondents to move before this Court for initiating contempt proceedings against the petitioner.”

10. It is also apt to record that SLP (C) No. 37472 of 2013 preferred against the order dated 8.7.2013 passed by this High Court in Civil Revision No. 49 of 2006 was also dismissed by the Supreme Court, alongwith SLP No. 36864 of 2013 preferred by the tenant, with following observation:-

“We are not agreeable to the said submission made by the learned counsel for the petitioner. According to us the High Court has asked the petitioner to re-induct the tenant in the same place and location which means in the same building on the same place, equivalent to the area which was occupied by the tenant earlier.”

It is needless to say that rest of the provision of law as innumarated in proviso to Section 14 (c) of the Himachal Pradesh Rent Control Act is required to be followed.”

11. In aforesaid background tenant filed an application case No. 14-2 of 2014 before the Rent Controller which was dismissed on 30.6.2014 by passing order which is impugned in the present Revision Petition.

12. Proviso to Section 14(3)(c) of the Rent Act, relevant in present matter, reads as under:-

“Provided that the tenant evicted under this clause shall have the right to re-entry on new terms of tenancy, on the basis of mutual agreement between the landlord and the tenant, to the premises in the re-built

building equivalent in area to the original premises for which he was a tenant.”

13. The application filed by the tenant, dismissed vide order dated 30.6.2014, was opposed by the landlord by filing reply, wherein it was categorically stated as under:-

"6.

a. The respondent/applicant and his wife were residing in Shimla earlier on account of both of them being in the government service of State of Himachal Pradesh. However, after the retirement of his wife, the respondent/applicant and his wife have permanently shifted residence to the town of Kandaghat in district Solan. They are residing there in House No. 1, Kohari Kandaghat, District Solan since a long time. Therefore they have no need for a personal residence in Shimla. The electricity bill of the respondent/applicant pertaining to his house at Kandaghat is annexed herewith as Annexure R-1.

b. The respondent/applicant /tenant has actually transferred his lease hold rights in the demised premises in favour of his son Shri Ashok Bhardwaj, who has been pressing upon he petitioners/non-applicants to recognize him as an exclusive tenant of the premises in question. This fact is also evidenced by a letter dated Nil enclosing therewith a demand draft bearing No. 981092 drawn on the Indian Bank SR Br. New Delhi dated 5.5.2014 in the sum of Rs.6,000/- The said letter and draft were posted by speed post to the petitioners/non-applicants by the aforesaid Shri Ashok Bhardwaj on the 22.5,2014. The copies of the said letter, demand draft and envelope are annexed as Annexure R-2 (Colly). Perusal of the letter will show that Ashok Bhardwaj has forwarded the aforesaid demand draft by stating that it is "on account of my payment as occupation charges amounting to Rs.6,000/- for the month of April 2014". He has further called upon the petitioners/ non- applicants to furnish their bank account number to him in order to "enable me to deposit the same directly to your account and to avoid inconvenience to me..". The said letter also makes it clear that Shri

Roshan Lal Bhardwaj is no longer in occupation of the premises and that he has transferred his interest in the same in favour of his son Ashok Bhardwaj without any written permission/consent of the land lord but most importantly it establishes the fact that Shri Ashok Bhardwaj is claiming himself to be exclusive tenant in occupation of the premises."

14. The aforesaid contention was not refuted by the tenant by filing any rejoinder or documents to counter the documents filed by the landlord.

15. Learned counsel for the tenant has placed reliance upon judgment dated 21.11.2018 passed in CR No. 99 of 2018, titled as Dr. Ashok Kumar Sood Vs. Sardar Darshan Singh, whereby Revision Petition preferred by a landlord was dismissed by co-ordinate Bench of this High Court and in the said case landlord was directed, to restore possession of demised premises to the tenant therein within 30 days, by the Rent Controller. In the said case, as recorded in para 5, landlord did not carry out re-building/re-construction work and only buttressed the building by carrying out plastering of walls and flooring work and it was thereafter that tenant therein had filed an application for restoration of possession of tenanted premises on the ground that landlord had not put the premises for use of the purpose for which eviction was obtained by him. Therefore, this judgment is not relevant in given facts and circumstances of present case.

16. It is not case of the tenant that building plan has been sanctioned and approved by Municipal Corporation in favour of landlord

and/or landlord has re-constructed or re-built the structure/building after demolishing the premises in reference.

17. Learned counsel for the landlord has also contended that present Revision Petition is not maintainable as order impugned herein was and is appealable and, therefore, when tenant has statutory remedy of filing appeal, then he was and is not entitled to invoke revisional jurisdiction of this Court.

18. Section 24 of the Rent Act read as under:-

"24. Vesting of appellate authority on officers by State Government.- (1)

(a) The State Government may, by a general or special order, by notification, confer on such officers and authorities, as it thinks fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.

(b) Save as otherwise provided in this Act, any person aggrieved by an order passed by the Controller, except the orders for the recovery of possession made by the Controller in accordance with the procedure prescribed under section 16, may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. (In computing the period of fifteen days, the time taken to obtain a certified copy of the order appealed against shall be excluded).

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

(4) The decision of the appellate authority and subject only to such decision, an order, of the Controller shall be final and shall not be liable to be called in question in any court of law except as provided in sub-section (5) of this section.

(5) The High Court may, at any time, on the application of any aggrieved party or on its own motion call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit."

19. It is true that appeal has been provided under Section 24(1)(b) of Rent Act against an order passed by the Controller, except the order for recovery of possession made by the Controller in accordance with procedure provided under Section 16 of the Rent Act. However, at the same time Section 24(5) of the Rent Act empowers the High Court to call for and examine the records relating to any order or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings either on application of aggrieved party or on its own motion. In normal circumstances, parties should be relegated to avail statutory remedy of appeal provided under the statute by adopting usual course, but in peculiar facts, in present case, it would not be appropriate to adopt such course at this belated stage especially after 10 years of filing of Revision Petition.

20. It is also apt to record that present petition was filed in the year 2014 and counsel for the respondents, after their service through

publication, had put in appearance on 1.10.2018 and thereafter matter was listed in the Court on several times and objections with respect to maintainability was taken on 11.12.2019 for the first time. Now we are in March, 2025. Therefore, taking into consideration the peculiar facts and circumstances, I do not consider it appropriate to relegate the parties to the Appellate Authority, particularly keeping in view the provisions of Section 24(5) of the Rent Act, which give vast power to the High Court, but limited to satisfying itself as to the legality or propriety of order or proceeding.

21. By avoiding filing an appeal, tenant has lost his own right to have findings of the Appellate Authority by considering the facts in detail, but he has opted for limited right to assail the impugned order herein with respect to its legality or propriety only. With these observations, I do not consider it appropriate to, instead of deciding the Revision Petition on merits, to refer the parties to the Appellate Authority.

22. Learned counsel for the petitioner has also placed reliance on judgment dated 27.6.2022, titled as ***Suman Dawar and Another Vs. Surinder Singh Khera***, reported in ***(2022) 2 Latest HLJ 913*** and judgment dated 21st March, 2023, ***titled as Rattan Chand Vs. Madhu Bharat Chadha and Another***, reported in ***(2023) 1 RCR (Rent) 605***.

23. I am of the opinion that observations, made in ***Rattan Chand's*** case in following paras, are relevant in present case:-

"16. So far right of re-induction or to re-entry shall be subject to and adherence to all provisions of law applicable and prevailing at relevant point of time for such re-entry including determination of fair rent or rent mutually agreed between the parties as well as proposed user and utilization of the property by the landlords.

17. Right to re-entry of the tenant has been granted in the Act itself. However, such right shall definitely is not to be an absolute right, as the Courts have to determine the same keeping in view the given facts and circumstances of the case including the purpose for which reconstruction/rebuilding of the premises has been proposed and permitted, and also keeping in view the bonafide requirement of the landlord. In case premises after rebuilding/reconstruction is to be rented, then definitely tenants shall have right to re-entry/re-induction in the premises, in accordance with law, as recorded hereinabove. For example, if premises is ordered to be vacated for banafide requirement of the owner to utilize the premises in better way by converting the residential building into a commercial complex, in such eventuality tenant living in residential premises may not claim re-entry or re-induction in the newly constructed commercial complex for residential accommodation. Similarly, there may be a case where landlord intends to expand his business and shall have requirement of more space for commercial activity by rebuilding/reconstructing the premises. In such eventuality also, it may not be justified to impose a tenant upon him causing curtailment of his plan of extension of his business. In a given case, a building may be proposed to be reconstructed or rebuilt for own residential purpose with no proposal to let it out. In such eventuality, a tenant cannot be thrust upon the owner of the premises by way of re-induction or re-entry in a house particularly designed and constructed in a manner that there is no scope for letting out portion thereof as existence of any other family in such premises may cause interference in privacy. Such re-entry/re-induction shall amount to depriving a person from his right of full enjoyment of his property for no fault on his part, but for the only reason that he or his predecessor had

provided rented accommodation to someone in the past, as per circumstances prevailing at that time."

24. Proviso on the basis of which tenant is claiming direction for construction of building within a time frame and right of re-entry, provides therein re-entry/reinduction on new terms of tenancy, on the basis of mutual agreement between the landlord and tenant in the premises in re-built building. Therefore, for invoking this proviso, there must be a rebuilt building and new terms of tenancy finalised on the basis of mutual agreement between landlord and tenant. In present case, there is nothing on record that premises in question has been rebuilt and landlord has decided to utilize by renting out the same on certain new terms or any mutual agreement between landlord and tenant has been arrived at on the basis of new terms of tenancy or any other person have been inducted by landlord as tenant, avoiding the previous tenant.

25. Tenant has also not disputed non-payment of rent by original tenant after April, 2016 and the documents and averments in the reply of landlord reveal that now Ashok Bhardwaj son of tenant is claiming tenancy, who has no right of re-entry, in terms of orders passed by various Courts, in present case. It has also not been disputed that landlord alongwith his wife is residing at Kandaghat on the address given in the reply, which is also substantiated by the documents attached therewith.

26. Right to re-entry has been given to bonafide tenants, who have no other option to have shelter, except the building in reference proposed to be re-built, but not a person who has no business or no cause to continue the tenancy, particularly after retirement when he has started residing in a different township/village.

27. It is further noticeable that Supreme Court has directed to handover the possession by tenant to the landlord on or before 30.6.2014, whereas application seeking direction to the landlord was preferred prior to vacating the premises, which was and is not maintainable because before vacation of the premises by tenant, there was no question of initiating/commencing re-building/re-construction by the landlord.

28. Conjoint reading of various orders passed in present matter, some of which have been upheld by the Supreme Court, with judgment of *Hari Dass Sharma's* case and Civil Revision No. 49 of 2006, decided on 8.7.2013, I am of the considered opinion that there is no merit in the plea taken by the tenant seeking direction to the landlord in present matter and thus there is no illegality or impropriety in impugned order.

Accordingly, petition is dismissed, alongwith pending applications, if any.

22nd April, 2025
(Keshav)

(Vivek Singh Thakur),
Judge.