

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-1348-2016 (O&M)****Reserved on: 06.05.2025****Pronounced on: 01.07.2025****Rajesh Kumar Ahluwalia****...Petitioner(s)****Vs.****Anil Kumar & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Vaibhav Katoch, Advocate
for the petitioner.

Mr. Sanjiv K. Aggarwal, Advocate
for the respondents.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the landlord against the order dated 02.12.2015 passed by learned Appellate Authority, Ambala allowing the appeal filed by the respondent/Tenant against the judgment of the learned Rent Controller dated 14.03.2014 whereby the Rent Petition filed by the petitioner under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as "the Act"), had been allowed.

2. Brief facts of the case are that the petitioner is the owner-cum-landlord of the shop bearing No.1132-1133, Block-IV, Railway Road, Ambala City (hereinafter referred to as 'the demised shop'). The demised shop was previously owned by Prahlad Bhagat, father of the petitioner. Prahlad Bhagat had let out the demised shop to Shiv Parshad, predecessor-in-interest of the respondents. Shiv Parshad expired and his



tenancy rights were succeeded to by the respondents. Prahlad Bhagat sold the demised shop to the petitioner vide registered Sale Deed dated 16.09.1996; whereafter, Shiv Parshad, and after him the respondents became tenants under the petitioner. The rate of rent was Rs.33/- only per month. The petitioner had filed the present Rent Petition under Section 13 of the Act on dated 13.9.2008 seeking ejectment of the respondents from the demised shop primarily on two grounds: a) that the shop in question had become unsafe and unfit for human habitation and lay in dangerous position and may collapse at any time as roof has gone weak with damp walls and cracks in them; and b) arrears of rent. Vide judgment dated 14.03.2014, Rent Petition was allowed by the learned Rent Controller on the ground that the demised shop was found unfit for human habitation. However, the appeal filed by the respondent was allowed by the learned Appellate Authority vide impugned order dated 02.12.2015 on the ground that the petitioner had been unable to prove that the demised shop was unfit for human habitation. Ground of arrears of rent did not survive as, in the interregnum, the respondent had cleared all the arrears. Hence, present Revision Petition by the landlord.

3. It is inter alia submitted by learned Senior Counsel for the petitioner that the Appellate Authority was in patent error in holding that the demised shop was fit and safe for human habitation. In doing so, the learned Appellate Authority had ignored cogent and expert evidence on record, indicating to the contrary. Learned Senior Counsel submits that the petitioner had examined Civil Engineer A.K. Malik PW1 who had visited the



shop and submitted his report (Ex.P1) that the entire building is in dangerous and dilapidated condition and therefore uninhabitable. However, the learned Appellate Authority had not even considered the report, Ex.P1, and discarded it for flimsy and spurious reasons. In fact, even the expert RW1 produced by the respondent had admitted in his cross-examination that there is a horizontal crack in the demised shop. RW1 has further admitted that the building is of second-class construction and that the life of the second-class building is 70-75 years. The photographs submitted by RW1 along with his report (Ex.R1) show that the terrace is in broken condition and that the age of the building is about 70 years. Even otherwise, it is the own admitted case of the respondent that he and his predecessor-in-interest have been in the demised shop since 1940. It is submitted that the shop in question is more than 100 years old. Even the walls of the shop are made of mud mortar, and with Nanak Shahi bricks. Ld. Senior counsel submits that though these facts have been noticed by the Appellate Authority, however, the same have not been correctly appreciated.

4. Ld. Senior Counsel for the petitioner further submits that the Ld. Rent Controller after considering both the reports and the photographs produced by the respondent had correctly held that it was clear that the shop is very old and in a dilapidated condition. It was found that the walls are damp, and roof has big crack in it. It is submitted that from these facts it is clear that shop is not in inhabitable condition. Further, as per the precedent judgments of the Courts a landlord cannot be asked to



wait for the building to fall. Neither the Rent Act suggests that. The only ground in the Rent Act is where the building has become unfit and unsafe. The unfitness of the building and its being unsafe has been certified by the building expert. Accordingly, the Ld. Rent Controller had ordered eviction of the respondent tenant from the demised premises. The Ld. Appellate Court reversed the findings on the ground that the petitioner had not taken any photograph of the spot and the walls are plastered with cement and mortar despite agreeing with the fact in para No. 15 of the impugned order, that the iron girders have gathered rust and some wooden karis have blackish colour on it. The judgment of the Appellate Court saying that the walls being damp and roof having cracks is not supported by any corroborative evidence is absolutely incorrect being contrary to the expert report submitted by PW1. The building expert have clearly opined about the unfit and unsafeness of the shop in question which has become un-inhabitable. The shop is more than 100 years old which fact has been acknowledged even by the Appellate Court in para No. 16 of its judgment. The Ld. Appellate Court has not even discussed the report of the building expert produced by the petitioner which has caused a great injustice.

5. In support of his contentions, learned Senior Counsel for the petitioner relies upon judgments of this Court in **Satnarain Vs. Satnarain (Deceased) Through His Lrs, (P&H) :Law Finder Doc ID # 2102012; Sita Ram Bansal v. Niranjana Dass, (P&H) : Law Finder Doc Id # 251; Surjan Singh Vs. Shanti Devi (P&H) :Law Finder Doc ID # 84337; and Darshan Kumar Vs. Manjit Kaur (P&H) :Law Finder Doc ID # 61554**, in all of



which cases in similar circumstances, it has been held that where building was old/ being over about 50 years and the Local Commissioner/qualified engineer in his report had opined that the same is unfit for human habitation, the order of eviction was upheld. In **Sita Ram supra** the tenant had been inducted in the shop in 1939, and building had been constructed using mud mortar which had lost its cohesive strength, and as per report of qualified engineer, building was likely to fall, order of eviction was upheld.

6. Learned Senior Counsel relies upon another judgment of this Court in **Vinod Kumar Vs. Bhushan Kumar Jain & Others (P&H)**

:Law Finder Doc ID # 1357945, wherein it is held as under:-

“22. Undoubtedly, the parties themselves are presumed to be interested witnesses while deposing as to certain facts, and to an extent even their respective Building Experts are expected to tow their lines to support their relevant clients, but from the detailed observations regarding dilapidated condition of the demised premises as reproduced in Para 41 of the Judgment of Appellate Authority above, in which even the Building Expert from the Tenant's side also admitted that the roof of the demised Shop had fallen and portion of the Room shown in the Photographs Ex. AW4/J was in bad condition and that admittedly, rainy water falls in the premises through the hole created by falling of the Shop, leave no scope of doubt that the actual condition of the demised premises happens to be dilapidated, particularly considering the fact that the Building Expert examined from the Tenant's side admitted that he had first visited the Suit Shop on 1.7.2013 (during the pendency of the Eviction Petition) without obtaining any permission from the Court. In such



circumstances, this Court is inclined to place more reliance on the report of the Building Expert from the Landlord's side, since admittedly, there are cracks in the building which is close to 100 years old by now, its roof has fallen and internal condition of the Room is not good and rainy water enters into the premises through the hole created by the fallen portion of the roof, which undoubtedly further damages the foundational structure of the building, and the mere fact that the building has not totally fallen down for the last 22/23 years is not reason enough to convince this Court that it is otherwise not outlived its life, or that it is not likely to collapse even in future at any time.”

7. Learned Senior Counsel further relies upon judgment of this Court in **Puran Chand Pandey Vs. Smt. Savitri Jain and Another (P&H) :Law Finder Doc ID # 1815465**, wherein it is held that:-

“10. Both the learned courts below have rightly relied upon evidence of the building expert, PW4 P.R. Gupta, who has reported the demised shop to be a C-Class building not less than 100-110 years old and opined it as totally unfit and unsafe for human habitation and use. Photographs Ex. PW4/C to Ex. PW4/T have been referred, to observe that the shop in question is dilapidated and its roof which is constructed of wooden battens, had developed big cracks and had broken at many places. Big cracks in the walls and opening of the joints are mentioned. Both the learned courts below have been duly cautious and sensitive to the fact that there is a general tendency of a private expert deposing in favour of the person who engages them. It is in this scenario that learned Appellate Authority has taken note of the admission of the



petitioner tenant and his son that rain water seeps into the disputed shop besides the photographs etc. placed on record to uphold the finding of the premises being unfit and unsafe for human habitation and use. It is rightly observed by the learned Appellate Authority that the landlady is not expected to wait till the building in question collapses. Learned courts below have rendered the respective impugned judgments after proper appreciation of the evidence on record.”

8. It is accordingly prayed that the present petition be allowed and the judgment dated 02.12.2015 passed by Appellate Authority be set aside and the judgment dated 14.03.2014 passed by Rent Controller be upheld.

9. Per contra, learned counsel appearing for the respondent/tenant vehemently opposes submissions made on behalf of the petitioner and submits that the expert report (Ex.P1) produced by the petitioner cannot be relied upon as the same was not accompanied by any photographs. The respondent had also got his expert opinion from the Architect RW1 who had submitted his report (Ex.R1) along with which photographs (Ex.R6 to Ex.R-31) were attached. It is submitted that from the said photos, it was clearly shown that the demised shop was habitable. RW1 had duly proved his report (Ex.R1) pointing that the demised shop was safe and fit for human habitation. It is further argued that the falsity of the claims of the petitioner are established from the fact that the Rent Petition was filed in the year 2008 and it is now 2025 and the demised shop is still standing strong without any mishap in the



intervening years. It is argued that accordingly, the sole ground on which the petitioner is seeking eviction of the respondent, is made out to be untrue.

10. Learned counsel also refers to the cross-examination of the expert AK Malik PW1 produced by the petitioner to submit that he has also admitted in his cross-examination that no photographs were produced by him. Even no notice has been received from the Municipal Committee and the Fire Brigade. As such, there is nothing on record to remotely indicate that the building is not habitable. Learned counsel reiterates that the report (Ex.P1) is not reliable.

11. It is further submitted that the objection of the learned Senior Counsel that permission of the Court was not sought by the respondent before getting expert opinion or that the said report (Ex.R1) was taken by the respondent without notice to the petitioner, are also unwarranted as the demised shop is of the respondent; and therefore, no notice was required to be given to the petitioner and the respondent can get an expert opinion as per his will.

12. Ld. Counsel for the respondent also submits that the petitioner has got the adjoining shops vacated from their tenants and has rented out the said shops again. Learned counsel refers to the cross-examination of the petitioner PW2 who has lied before the Courts below and has denied that the adjoining shops have been got vacated by him and then rented out again. Learned counsel for the respondents further



submits that the petitioner gets vacated the shops in his ownership on the pretext of personal necessity and then gives them again on higher rent.

13. In support of his contentions, learned counsel for the respondents has relied upon judgments of this Court in **Santosh Chadha Vs. Shri Amar Nath (P&H) :Law Finder Doc ID # 399799** and **Satinder Kumar Gupta Vs. The Regional Manager, Himachal Road Transport Corporation (P&H) :Law Finder Doc ID # 421031**, to submit that in the said cases also, the demised building was 70-90 years old. But this Court had held that the same would constitute no ground to hold that the building was in dilapidated condition and therefore, un-inhabitable.

14. Learned counsel for the respondents further relies upon judgment of this Court in **Kewal Chand Jain & Another Vs. Jiwan Kumar Kaushal (P&H) :Law Finder Doc ID # 53952**; wherein it has been held that:-

“38...Nothing has been pointed out by the lower appellate Court as to how the findings arrived at by the Rent Controller could not be sustained. Merely a building being an old one constructed with Nanak Shahi bricks, does not lead to an inference that it has become unfit for human habitation. Taking the preponderance of the circumstances into consideration i.e. to the effect that no neighbour was examined to prove that the building is in a dangerous condition and it is unfit for human habitation; no notice was given by the Municipal Committee for demolition of the building being unfit and dangerous; the landlord non-appearance in the witness box; attorney's silence with respect to the nature of the building; expert being an interested



witness; and the admissions made by the witnesses of the landlord that except for the wall everything was in order, it cannot be inferred that the building has become unfit for human habitation. Breaking of one brick here and there and uneven flooring is nothing else but minor wear and tear of the building, which cannot be a ground for ejection.”

15. Learned counsel also relies upon Constitution Bench judgment of Hon’ble Supreme Court in **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (SC) (Constitution Bench) : Law Finder Doc ID # 605484**, wherein it is held that: -

“Finding of fact recorded by Appellate Court – Revision before High Court against the order – High Court has no power to re-appreciate evidence to come to a different conclusion.”

16. It is accordingly prayed that the present revision petition be dismissed.

17. No other argument is raised on behalf of the parties.

18. I have heard learned Counsel for the parties and perused the case file in great detail. After giving my thoughtful consideration to the rival contentions raised on behalf of both the parties, I find no merit in the submissions advanced on behalf of the respondent/tenant for the reasons recorded hereinafter.

19. The petitioner had sought eviction of the respondents from the demised premises primarily on two grounds: a) that the demised premises were unfit and unsafe for human habitation; and b) that the respondents were in arrears of rent since 1.1.1998. Record reveals that



the respondents had cleared arrears of rent on 06.11.2008. As such, the said ground for eviction was no longer available to the petitioner.

20. As regards the shop in question being unfit and unsafe for human habitation, it is the case of the petitioner that the building in which the demised shop is situate, is more than 100 years old. Though this has been denied by the respondents, however, it has been simultaneously admitted by the respondent/ RW6 that he and his predecessor-in-interest have been in occupation of the demised premises since 1940.

21. As such, in order to ascertain the living condition of the demised shop, the learned Rent Controller had appointed/directed experienced building expert/ Civil Engineer A.K. Malik, to inspect the demised premises. Admittedly, prior to inspection of the demised shop on 20.11.2010, the expert Mr AK Malik had issued notice dated 10.11.2010 Ex.P-4, to all concerned persons including the respondents through registered post Ex.P-3 and UPC Ex.P-5. Pursuant to the same, demised shop was inspected in the presence of the petitioner and the respondents. The presence sheet Ex.P-6 was prepared at the site. It is recorded in the report dated 10.02.2011 (Ex.P1) that the respondents had refused to sign the presence sheet. After inspecting the property, Mr. A.K. Malik, Civil Engineer B.E. (Civil) had given the report (Ex.P1) (available from page 31 to 37 of the LCR), which reads as follows: -

"In pursuance to the permission granted by the Hon'ble Court and also at the instance of the petitioner, Sh.Rajesh Ahluwalia, I inspected the disputed property (Shop) bearing No. 1132-1133, block 4, Railway Road, Ambala City, on 20-11-



2010, at about 3.30 pm. Before visiting the disputed premises, notices regarding my inspection were given to all the concerned persons through registered/UPC letters dated 10-11-2010. At the time of my inspection, Sh.Rajesh Ahluwalia, the petitioner, Sh. Anil kumar, the respondent, were present. Presence sheet was also prepared at site but the respondent refused to sign it. Thereafter, detailed measurements and other field data as available at site were taken for the purpose of preparation of building plan and report. The building plan is attached with the report which forms part of the report.

Description of the premises

The above said disputed shop at the ground floor which seems to be a part of a big building is situated at Railway Road, Ambala City. Sweets business is being done in the said shop under the name and style of Anil Sweets. The said disputed premises consists of seven rooms as shown in the attached plan.

Specification and Condition of the disputed Premises

The above said disputed premises is a very old building and in damaged condition. It has been built with most simple and ordinarily specifications in mud mortar/and technically speaking no load bearing measures were kept in mind at the time of raising the structure. The entire disputed premises reveals a shabby look with low roof rooms. After detailed examination of the condition of the building materials used, type of construction and on account of my experience in the field, I am of the opinion that the premises is more than 100 years old. It has completed its normal span of life which is usually 50 years for such type of buildings and is absolutely unfit and unsafe for human habitation. The entire building is in dangerous condition and there can be any sudden mishap.



There is absolutely no possibility of putting the disputed premises inhabitable position because it is beyond all repairs. In view of construction, whatever standing in dilapidated condition, I give below the nature of general construction and condition of the premises detailwise:

- *The brick work is in mud mortar.*
- *Nanakshashi bricks of size 10"x5"x2" have been used in the walls.*
- *Walls have been plastered with cement sand mortar. Plaster on the walls has become fluffy and broken at so many places. Plaster gave dull sound when struck with a light hammer, thus showing that the plaster has lost bond with the walls.*
- *Dampness in the walls is also observed.*
- *Bricks are eroding due to their old age and so the walls are unable to bear the superstructure load.*
- *Old Dat type roofs have been cast in room no. 1,2,4 and 7. The approx. average height of the roofs of the rooms is 7'-6" which is very low. According to the specifications, the minimum height of the roof of the room should be 10'-0".*
- *The roofs of the room no. 3,5 and 6 have been constructed with wooden phatties over wooden karries/ballies as shown in the attached plan.*
- *All the wooden karries and phatties of the roofs of the rooms have been eaten by white ants and are decayed due to their age.*
- *The wooden karries gave a dull sound when struck with a hammer thus showing that the wooden karries have become unserviceable.*
- *The floor of the rooms except room no. 4 and 5 have been constructed with cement concrete.*



- *The topping of the floors of the rooms have broken and the floors of the rooms have become uneven.*
- *The floor level of room no. 6 and 7 is 6" down from the floor level of the platform outside.*
- *Marble pieces with marble chips in cement have been used for flooring in room no. 4 and 5.*
- *The wooden chowkhats and shutters decayed due to age have been removed from the door openings except between room no. 1,2 and between room no. 6,7.*
- *The vertical member of the chowkhat between room no. 1 and 2 have been replaced recently.*
- *The electric wirings in almost all the rooms are in damaged condition and is unserviceable.*

Opinion

In view of the above stated facts, I am of the considered expert opinion that:

- 1. The premises in dispute is absolutely unfit and unsafe for human habitation.*
- 2. The premises in dispute has outlived its normal span of life and is beyond repairs.*
- 3. The building is in the main bazaar and gives a shabby look being very old and in dilapidated condition.*
- 4. The only remedy is to demolish it completely and reconstruct the same from the foundation level.*

Hence the report"

22. From a bare reading of the above report, it is clear that the shop was severely damaged and unfit for habitation. However, the above expert report has been discarded by the learned Appellate Authority only for the reason that the same was not accompanied by any photographs. Instead, while passing the impugned order, the learned



Appellate Authority has chosen to rely upon a report dated 18.02.2012 (Ex.R1), submitted by one Mr. S.M. Mittal, Civil Engineer Diploma, registered Architect commissioned by the respondents to inspect the demised shop. The report dated 18.02.2012 (Ex.R1) (available at pages 91 to 99 of the LCR) along with photographs (Ex.R6 to Ex.R-31) rendered the opinion that the *“said shop in dispute is fit for human habitation”*. It was reported that: -

“CONDITION AND OTHER DETAIL OF THE PROPERTY:-

The said property consisting one shop having seven portions mark 'A', 'B', 'C', 'D', 'E', 'F', 'G' & 'H', in which the tenants are running the business of sweet shop under the name and style of "M/S Anil Sweets. On dated 12.02.2012, between 10:00 A.M. to 11:00 A.M. The condition of the said property was as under:-

PORTION MARK-"A":-

- *21" thick brick walls laid in lime mortar are intact and in vertical position Cement plaster and whitewash of yellow color on the inner walls. I am unable to trace any crack in the said walls. (see photograph No.2,3,4 & 6)*
- *Arch (datt) type roof and cement plaster underside the ceiling with whitewash of yellow color on it. The height of the ceiling from the floor is 8'10" and was in good condition. I am unable to trace any crack in the said ceiling. (See photograph No. 5)*
- *The floor of the said portion is of Conglomerate floor and in good condition. The level of floor is 9" high from the road level.*
- *Electricity fitting with conduit pipe is in good condition.*

PORTION MARK-"B"



- 18" thick brick walls laid in lime mortar are intact and in vertical position Cement plaster and whitewash of yellow color on the inner walls. I am unable to trace any crack in the said walls. (See photograph No.8,9,10& 11)
- Arch(datt) type roof and cement plaster underside the ceiling with whitewash of white color on it. The height of the ceiling from the floor is 9'2" and was in good condition (see photograph No.10,10A & 11)
- The floor of the said portion is of Conglomerate floor and in good condition. The level of floor is 9" high from the road level.
- Electricity fitting with conduit pipe is in good condition.

PORTION MARK-"C":-

- 18" thick brick walls laid in lime mortar are intact and in vertical position Cement plaster and whitewash of yellow color on the inner walls. I am unable to trace any crack in the said walls. (see photograph No. 12,13,14 & 15)
- The roof of the portion mark with 'C' is made with eleven wooden battens stays on the two wooden balas and one iron girder. The height of the ceiling from the floor is 9'2" and was in good condition.
- The floor of the said portion is of conglomerate floor was in good condition. The level of floor is 9" high from the road level.

PORTION MARK-"D":-

- 20" thick brick walls laid in lime mortar are intact and in vertical position with wall tiles up to 4'0" height from the floor and cement plaster above the wall tiles. White wash of pink color on the inner walls. I am unable to trace any crack in the said walls and the walls are in good condition. (see photograph No.16 & 17)



- *Arch (datt) type roof and cement plaster underside the ceiling with white wash of white color on it. The height of the ceiling from the floor is 9'0" and was in good condition (see photograph No.16,17 & 18)*
- *The floor of the said portion is of terrazzo floor with marble pieces and in good condition. The level of floor is 9" high from the road level. (see photograph No.19)*
- *A wooden door in between the portion mark 'C' & 'D' is in good condition however it requires wooden paint. (see photograph No. 17)*
- *Electricity fitting with conduit pipe is in good condition."*

23. Thus, two contradictory reports were submitted before the learned Rent Controller. The reasoning of the learned Appellate Authority in preferring the above report Ex.R-1, over the report Ex.P-1 submitted by the Court-appointed building expert, is contained in Paras 14, 15, 16 and 17 of the impugned judgment dated 02.12.2015, which read as follows: -

"14) Firstly if we perused the evidence of the expert witness produced by the petitioner, it goes to show that while deposing as PW-1 the witness has stated in his cross-examination that the dispute property was part of a big property and in his report the witness has not mentioned regarding the inspection of the terrace. He had neither taken any photograph of the spots of broken plaster nor mentioned the same in his report or the site plan. That the walls of the dispute property were plastered with cement and mortar. That there were shops in running condition in the building and there was no crack in any of the daat roof of the disputed property. There was some plaster inside the walls of the daat



roof and there was no crack in any of the walls of the disputed property. At the time of his visit the shop in dispute was in running condition and there was no water collected on the terrace of the disputed property.

This was mainly the witness relied upon on whose evidence the ejection of the respondents was ordered but it is seen that apart from the report prepared by this witness, the report is not supported by any photograph and on the other hand when the respondents' witness was examined he alongwith his report has produced on file several photographs and the perusal of the said photographs show that there is nothing which would make the building to be unfit and unsafe for human habitation.

15) Merely because at some places the iron girder is seen to have some rust formed on it or some wooden karries have some blackish colour on it, a conclusion cannot be drawn that the shop in question has become unfit and unsafe for human habitation. What stopped the petitioner expert to support his report with photographs is not clear and the expert witness could easily have produced the photographs to support his contention about the building being unfit and unsafe for human habitation.

16) The law is well settled that merely because a building is 100 years old or many years old a conclusion cannot be drawn about the same to be unfit and unsafe for human habitation and even if the building is constructed with Nanak Shahi bricks which were broken here and there, no inference can be drawn about the building to be unfit and unsafe for human habitation.....

.....

17) In the present case also a perusal of the judgment as passed by the learned Rent Controller goes to show that the



learned Rent Controller merely relied upon the report of expert as produced by the petitioner but did not consider the report of the expert witness produced by the respondents which was duly supported by photographs.”

(Emphasis added)

24. I find the above said reasoning of the learned Appellate Authority to be patently fallacious and liable to be set aside. Merely because report Ex.P-1 submitted by Court-appointed building expert Civil Engineer was not accompanied by any photographs, constitutes no ground to reject the same. Admittedly, the said report was accompanied by ancillary documents of inspection the same being Ex. P-2 to Ex. P-6. Thus, merely not taking any photographs by Mr. A.K. Malik would not render his report unreliable. Furthermore, even if the photographs (Ex.R6 to Ex.R-31) submitted by Sh. S.M. Mittal, Chief Architect are seen, it shows that there is widespread damage to the suit property; which is evident in particular from photographs (Ex.R-28 and Ex.R-31). Perusal of Ex.R-31 shows that severe damage has been caused to the roof of the demised shop from white ants. However, this fact has been ignored by the learned Appellate Authority.

25. The learned Appellate Authority has also ignored the fact that RW-1/ the architect who appeared for respondents with his report/Exhibit R-1 has admitted in his cross-examination that the brick work is done in mud mortar and the life of the cement plaster is 30-35 years and he does not know its age now. He admits that in Exhibit R-8



there is a horizontal crack, and that no photograph of the roof was taken. In Exhibit R-12 photograph of the terrace shows it in broken condition and the age of the building is about 65-70 years as at that time they were constructed with lime mortar. He admits that the building is of second class construction and the life of the second class building is 70/75 years. In his cross-examination Mr. SM Mittal, RW1 (at pages 197 to 199 of the LCR), has stated that: -

“Before visiting the spot I have not given any notice to the petitioner. It is correct that at the time of my inspection the petitioner or his representative was not present at the spot. It is wrong to suggest that the brick work has been done in mud mortar. The life of the cement plaster is 30-35 years. I cannot say how old is the cement plaster on the walls of the disputed property. I cannot say that it may be around 10-15 years old. The floors in portions A, B, C and F of Ex.R2 are approximately 30 years old whereas the floor of portions D, E and G are approximately 10-15 years old. I have seen photographs Ex.R7 to Ex.R11, there is no dampness in the walls. It is wrong to suggest that there is a dampness in the walls of the said building. I have seen Ex.R8, there is a horizontal crack in the wall above the door lintel level. It is wrong to suggest that to hide the defects of the roof of room portion C, I have not taken any photograph of the roof. It is wrong to suggest that the karris and phattis of the roof of portion C are eaten by white ants and are unable to bear the roof load. According to the specification the minimum height of the roof of the room should be minimum 10 feet from the floor level. It is correct that the height of the roofs of all the rooms of the said property is less than 10 feet. I have seen Ex.R12 which is the



photograph of the terrace of the said premises, in this photograph the topping of the terrace is in broken condition at point mark A' in the said photograph. I have seen the photograph Ex.R31, it is wrong to suggest that the black spots on the phattis in the roof are eaten by white ants and also wrong to suggest that wooden battens and phattis are in hollow condition. It is wrong to suggest that in the photograph Ex.R31 the two girders at the extreme ends of the roof have been provided just to support the edges of the battens as the edges of the battens have been eaten by white ants. It is correct that the vertical member of the wooden chowkhat in photograph Ex.R8 has been changed. It is correct that there are no wooden shutter or the sign of wooden shutter in the said door. It is correct that in the photograph Ex.R15 and Ex.R17 the loose/open wiring has been done. I have not conducted any test to ascertain the age of the building. I have given the age of the building about 55-60 years which is based on my experience. In my opinion the buildings constructed in lime mortar with datt roof were constructed about 65-70 years back. It is wrong to suggest that such types of buildings were constructed about 100 years back. It is wrong to suggest that the premises in dispute is absolutely unfit and unsafe for human habitation. It is also wrong to suggest that the building has outlived its normal span of life. The said building is of second-class type. The life of the first-class building is 70-80 years old whereas the life of second-class building is 70-75 years old. It is wrong to suggest that I am deposing falsely.”

(Emphasis added)

26. Thus, at the risk of repetition, it is reiterated that it has been inter-alia, admitted by the respondent witness himself that there is



horizontal crack in the wall above the door level; that no photograph was taken of the roof alleged to have been eaten by white ants; that he had conducted no test to ascertain the age of the building; and that the building construction was of second-class type, which was about 70–75 years old. However, all the above admissions, have been ignored by the Id. Appellate Authority. Thus, there are material manifest errors of law in the impugned order.

27. It has been argued on behalf of the respondents that in revisional jurisdiction, it is not open for this Court to reappraise or reconsider the evidence on record; and that the findings of fact of the Appellate authority have to be accepted as is. There can be no issue with the established legal proposition that scope of revisional jurisdiction is limited and cannot be equated with appellate jurisdiction. It is also made clear that in setting aside the impugned order this Court is not enlarging to itself the powers of the appellate court. However, the said argument of the respondents is misconceived and liable to be rejected in the present case as, the reasons cited by the learned Appellate Authority for setting aside the well reasoned judgement of the learned Rent Controller do not bear scrutiny. It is for this reason that the Hon'ble Supreme Court itself in para 45 of the relied-upon Constitution Bench judgment in **Dilbahar Singh supra**, held as follows: –

“45. 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.

(Emphasis added)

28. In the present case, there is not only patent misreading of evidence by the learned Appellate Authority; but the impugned order is



based on blatant misconceptions of fact. The learned Appellate Authority has held in Para 17 of its judgment dated 02.12.2015 that the judgment of the Rent Controller is not sustainable as it did not consider the report Ex. R-1 produced by the respondents, duly supported by photographs. However, the said reason given by the learned lower Appellate Court is factually incorrect as a perusal of Para 13 of the judgment dated 14.03.2014 passed by learned Rent Controller shows that the learned Rent Controller has examined and considered in extenso the photographs and the report (Ex.R1) produced by the respondents; and only thereafter rejected the said report Ex. R-1 by giving cogent reasons. The learned Rent Controller has further held the premises to be very old building in damaged condition, built with mud mortar, shabby-looking with low roof rooms and opined that the building is more than hundred years old. The learned Rent Controller after appreciating the evidence and other material on record came to the conclusion that the building is unsafe and unfit for human habitation and is required to be rebuilt after its complete demolition, and had accordingly, ordered eviction. On the other hand, the learned Appellate Authority although admitted that the girder is rusted and wooden karries are blackish, but there being no photographs to show that it is unsafe and unfit had reversed the findings. In doing so, the learned Appellate Authority had clearly ignored Photographs Exhibits R-12, R-15, R-17, R-22, R-25, R-28 and R-31, which indicate widespread damage to the building. In fact, perusal of the impugned order shows that the learned Appellate Authority has not adverted at all to the report Ex. P-



1, and has totally ignored the expert opinion contained in the said report. As such, findings of the Appellate Authority are not “according to law”, and suffer from patent illegality and perversity for overlooking and ignoring material evidence, thereby resulting in gross miscarriage of justice.

29. Besides the above, it is writ large on the record of this case that the learned Appellate Authority has otherwise also erred in preferring the report Ex. R-1 over Expert Report Ex. P-1. First and foremost, admittedly, the report Ex. R-1 was prepared in the absence of the petitioner. This fact has been admitted by Mr. SM Mittal, RW1 in his cross-examination that *“Before visiting the spot I have not given any notice to the petitioner. It is correct that at the time of my inspection the petitioner or his representative was not present at the spot.”* Thus, a report prepared in the absence of one of the interested parties could not have been relied upon. Furthermore, it is not denied by learned counsel for the respondent that report Ex. P-1 was prepared by experienced Building Expert and qualified Civil Engineer having degree of B.E. (Civil), who was appointed by the Court; whereas, the report Ex. R-1 has been prepared by an Architect having Diploma of Civil Engineer, at the asking of the respondent. For this reason as well, the report Ex. P-1 would have greater veracity and reliability. Thus, clearly, the reasons cited by the learned Appellate Authority for setting aside the well reasoned judgement of the learned Rent Controller do not bear scrutiny.



30. Argument of the respondent that the demised shop is still standing strong is liable to be rejected in view of judgments of this Court in cases of **Vinod Kumar Supra** and **Puran Chand Pandey Supra**, where it is held that the landlord cannot be expected to wait for the building to collapse totally.

31. In view of the above discussion, the present petition is **allowed**. The impugned judgment and order dated 02.12.2015 passed by learned Appellate Authority, Ambala, is set aside.

32. Pending application(s) if any also stand(s) disposed of.

01.07.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No