HARI DASS SHARMA

v.

VIKAS SOOD & ORS.

(Civil Appeal No. 4127 of 2013)

APRIL 29, 2013

[A.K. PATNAIK AND GYAN SUDHA MISRA, JJ.]

Rent Control – H.P. Urban Rent Control Act, 1987 – s.14(3)(c) & 14(4) – Eviction order passed by Rent Controller – On ground that appellant-landlord bona fide required the tenanted building for purposes of addition and alteration of the building or re-building – Eviction order maintained by High Court – But direction passed by High Court that only on the valid revised/renewed building plan being sanctioned by the competent authority, such eviction order shall be available for execution and thereafter the executing court shall allow reasonable time to the respondents-tenants for vacating the property and delivering possession to appellant-landlord – Propriety – Held: Once High Court maintained the order of eviction, 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 to the landlord – s.14(3)(c) does not require that building plans should be sanctioned by the local authorities as a condition precedent to the entitlement of the landlord for eviction of the tenant – Direction of the High Court that the order of eviction could only be executed on the revised plan of the building being approved clearly contrary to s.14(4) and the proviso thereto – Time granted to respondents to vacate the building within 3 months – Respondents can apply for re-entry into the building in accordance with the proviso to clause (c) of s.14(3) of the Act introduced by the Himachal Pradesh Urban Rent Control (Amendment) Act, 2009.

The appellant-landlord filed applications under

A Section 14 of the H.P. Urban Rent Control Act, 1987 for eviction of respondents-tenants on grounds that he bona fide required the tenanted building for purposes of addition and alteration of the building or re-building. The Rent Controller allowed the applications. The order of
B Controller was upheld by the Appellate Authority.

The respondents filed Revision petitions before the High Court which maintained the orders of eviction but directed that only on the valid revised/renewed building plan being sanctioned by the competent authority, the
C order of eviction shall be available for execution. The High Court further directed that the valid revised/renewed sanctioned or approved building plan shall be produced before the executing court whereupon the executing court shall allow reasonable time to the respondents-
D tenants for vacating the property and delivering possession to the appellant-landlord. The directions passed by the High Court were challenged in the instant appeals.

E Allowing the appeals, the Court

HELD: 1.1. A reading of clause (c) of sub-section (3) of Section 14 of the H.P. Urban Rent Control Act, 1987 would show that a landlord may apply to the Controller for an order directing the tenant to put the landlord in
F possession in case of any building if it is required bona fide by him for the purpose of building or rebuilding or making thereto any substantial additions or alterations and that such building or rebuilding or addition or alteration cannot be carried out without the building
G being vacated. Section 14(3)(c) does not require that the building plans should have been duly sanctioned by the local authorities as a condition precedent to the entitlement of the landlord for eviction of the tenant. The availability of building plans duly sanctioned by the local
H authorities is not an ingredient of Section 14(3)(c) of the

Act and, therefore, could not be a condition precedent to the entitlement of the landlord for eviction of the tenant, but depending on the facts and circumstances of each case, the Court may look into the availability of building plans duly sanctioned by the local authorities for the purpose of determining the bonafides of the landlord. [Para 8] [1037-G-H; 1038-A-B, F-G]

1.2. 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. The directions in the impugned judgment of the High Court are set aside, but time granted to the respondents to vacate the building within three months. 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 Himachal Pradesh Urban Rent Control (Amendment) Act, 2009. [Paras 11, 12] [1041-D-G]

Harrington House School v. *S.M. Ispahani & Anr.* **(2002) 5 SCC 229: 2002 (3) SCR 929 – distinguished.**

Jagat Pal Dhawan v. Kahan Singh (dead) by L.Rs. & Ors. **(2003) 1 SCC 191: 2002 (4) Suppl. SCR 301 – relied on.**

Shri Balaganesan Metals v. M.N. Shanmugham Chetty & Ors. **(1987) 2 SCC 707: 1987 (2) SCR 1173;** *J. Jermons v. Aliammal & Ors.* **(1999) 7 SCC 382: 1999 (1) Suppl. SCR 467 – cited.**

A **Case Law Reference:**

2002 (3) SCR 929	**distinguished**	**Para 4, 5, 6,11**
1987 (2) SCR 1173	**cited**	**Para 5**
1999 (1) Suppl. SCR 467	**cited**	**Para 5, 8**
2002 (4) Suppl. SCR 301	**relied on**	**Para 6**

B

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4127 of 2013.

From the Judgment & Order dated 02.09.2011 of the High Court of H.P. at Shimla in CR No. 179 of 2008.

WITH

D C.A. Nos. 4128 and 4129 of 2013.

Nidhesh Gupta, Rishi Malhotra for the Appellant.

E Dhruv Mehta, Seema S., Manik Karanjawala, Akhil Sachar, Saurabh Seth (for Karanjawala & Co.) for the Respondents.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. Leave granted.

F

2. These are appeals against the common order dated 02.09.2011 of the High Court of Himachal Pradesh in Civil Revision Nos.179, 180 and 181 of 2008.

3. The facts very briefly are that the appellant let out shops G in premises No.5 Cart Road, Shimla (for short "the building") to the respondents. The appellant filed applications under Section 14 of the H.P. Urban Rent Control Act, 1987 (for short "the Act") before the Rent Controller, Shimla, for eviction of the respondents from the building on grounds *inter alia* that he bona H fide required the building for purposes of addition and alteration

of the building or rebuilding. The respondents filed their replies before the Rent Controller denying that the appellant required the building for additions and alterations or rebuilding. The Rent Controller framed an issue as to whether the building was required bona fide by the appellant for rebuilding or reconstruction. The appellant examined an official of the Municipal Corporation, Shimla, in support of his case that a plan for rebuilding/ reconstruction had been sanctioned and also a Civil Engineer in support of his case that the building was in dilapidated condition and required to be reconstructed. The Rent Controller after considering the oral and documentary evidence on record held that though the sanction plan of the building was not a requirement of the Act, it is a circumstance to establish the bonafide of the appellant to seek eviction for the purpose of rebuilding or reconstruction and also held that the building was old and the appellant was in the occupation of second floor of the building and for rebuilding or reconstruction, the respondents have to vacate the building and accordingly allowed the applications of the appellant for eviction of the respondents from the building. The respondents filed appeals before the Appellate Authority, Shimla against the order of eviction but the Appellate Authority dismissed the appeals.

4. The respondents then filed the Civil Revisions before the High Court and by the impugned common order maintained the orders of eviction but relying on the decision of this Court in *Harrington House School* v. *S.M. Ispahani & Anr.* [(2002) 5 SCC 229] 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 further directed in the impugned order that the valid revised/ renewed sanctioned or approved building plan shall be produced before the executing court whereupon the executing court shall allow a reasonable time to the tenants for vacating the property and delivering possession to the landlord and till then the tenant shall remain liable to pay charges for use and occupation of the premises at the rate at which they were being

paid earlier. Aggrieved, the appellant has filed these appeals.

5. Mr. Nidesh Gupta, learned counsel appearing for the appellant, submitted that Section 14(4) of the Act provides that if the Controller is satisfied that the claim of the landlord is bonafide, he shall make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and the proviso to Section 14(4) of the Act says that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time not exceeding three months in the aggregate. He submitted that Section 14(4) of the Act thus makes it clear that the order of eviction once passed by the Controller will have to be executed and that the direction of the High Court in the impugned order that the order of eviction will not be executed till such time as the building plan is sanctioned for rebuilding or reconstruction of the tenanted building is contrary to the bare provision in Section 14(4) of the Act. He submitted that in *Harrington House School* v. *S.M. Ispahani & Anr.* (supra), on which the High Court has relied on in the impugned judgment, this Court decided the dispute between the landlord and the tenant under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and it had not considered the effect of the proviso to Section 14(4) of the Act whereunder the Controller had the power to grant in the aggregate three months time to put the landlord in possession of the tenanted premises. He cited the decision of this Court in *Shri Balaganesan Metals v. M.N. Shanmugham Chetty & Ors.* [1987) 2 SCC 707], wherein this Court, while considering the proviso to Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, similar to the proviso to Section 14(4) of the Act, held that the proviso empowers the Controller to grant adequate time to the tenant upto a maximum of three months to vacate the building and secure accommodation elsewhere. He also relied on the decision of this Court in *J. Jermons v. Aliammal & Ors.* [(1999) 7 SCC 382] in which it has been similarly held that a tenant is

entitled under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to be granted reasonable time for putting the landlord in possession of the building, which may be extended from time to time upto the maximum period of three months.

6. In reply, Mr. Dhruv Mehta, learned counsel appearing for the respondents, submitted that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as well as the provisions of the H.P. Urban Rent Control Act, 1987 ("the Act") are analogous and, therefore, the decision of this Court in *Harrington House School* v. *S.M. Ispahani & Anr.* (supra) will apply to a case arising under the Act and the High Court rightly relied on the decision in *Harrington House School* v. *S.M. Ispahani & Anr.* (supra) in which this Court directed that the order of eviction will not be executed until the plan for the building was sanctioned. He further submitted that in any case under the proviso to Section 14(4) of the Act the Controller has power to give to the tenant a 'reasonable time' for putting the landlord in possession of the building and it is only on expiry of such reasonable time that the Controller may extend the time not exceeding three months in any case. He submitted that the power of the Controller to grant reasonable time to the tenant for putting the landlord in possession of the building is different from the power of the Controller to extend such time not exceeding three months. He submitted that the expression 'reasonable time' to be given to the tenant for putting the landlord in possession of the building will depend upon the facts of each case and in the facts of the present case, the High Court has granted time upto the time of sanction of the plan for rebuilding or reconstruction of the building. In this context, he submitted that the sanctioned plan for reconstruction of the building has lapsed and as the building regulations for areas within the city limits of Shimla have undergone drastic changes, it is not permissible for the appellant to reconstruct the building as per the sanction originally granted. He submitted that in *Jagat Pal Dhawan v. Kahan Singh (dead) by L.Rs. & Ors.* [(2003) 1 SCC 191] this Court, while interpreting clause (c) of

A sub-section (3) of Section 14 of the Act, has observed that while adjudicating an eviction petition on the ground that the building is bona fide required by the landlord for reconstruction, the Court may look into the condition of building, availability of necessary funds and whether building plans have been B sanctioned by the local authority in order to assess the bona fide of the landlord, even if the Act does not require these aspects to be considered. He submitted that, therefore, unless the appellant produces the revised sanctioned plan before the executing court, the order of eviction cannot be executed as C rightly directed by the High Court and this is not a case for interference with the impugned order of the High Court. He finally submitted that by the Himachal Pradesh Urban Rent Control (Amendment) Act, 2009 (for short 'the Amendment Act, 2009') a new proviso has been added in clause (c) of Section D 14(3) stating that the tenant evicted under clause (c) of Section 14(3) of the Act shall have the right to re-enter on new terms of tenancy, on the basis of mutual agreement between the landlord and the tenant, to the premises in the rebuilt building equivalent in area to the original premises for which he was a tenant. He submitted that since the eviction orders passed by the E Controller in this case are under Section 14(3)(c) of the Act, the respondents are entitled to re-entry as per this proviso inserted by the Amendment Act, 2009.

7. Before considering the submissions of the learned F counsel for the parties, we may have a look at clause (c) of sub-section (3) and sub-section (4) of Section 14 of the Act. These provisions, as they stood before the Amendment Act, 2009, when the Controller passed the orders of eviction, are extracted hereinbelow:

G **"14. Eviction of tenants –**

(1) .....

(2) .....

(3) A landlord may apply to the Controller for an order H directing the tenant to put the landlord in possession:

(a) .....

(b) .....

(c) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation or is required bona fide by him for carrying out repairs which cannot be carried out without the building or rented land being vacated or that the building or rented land is required bona fide by him for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the building or rented land being vacated.

(4) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time not exceeding three months in the aggregate."

8. A reading of clause (c) of sub-section (3) of Section 14 of the Act would show that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession in case of any building if it is required bona fide by him for the purpose of building or rebuilding or making thereto any substantial additions or alterations and that such building or rebuilding or addition or alteration cannot be carried out without the building being vacated. In *Jagat Pal Dhawan v.*

A *Kahan Singh (dead) by L.Rs. & Ors.* (supra), this Court had the occasion to consider the provisions of Section 14(3)(c) of the Act and R.C. Lahoti J. writing the judgment for the Court held that Section 14(3)(c) does not require that the building plans should have been duly sanctioned by the local authorities
B as a condition precedent to the entitlement of the landlord for eviction of the tenant. To quote from the judgment of this Court in *Jagat Pal Dhawan v. Kahan Singh (dead) by L.Rs. & Ors.* (supra):

> "The provision also does not lay down that the availability
C of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of the tenant. However still, suffice it to observe, depending on the facts
D and circumstances of a given case, the court may look into such facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the bona fides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does
E not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be bona fide."

It will be clear from the aforesaid passage that this Court has held that availability of building plans duly sanctioned by
F the local authorities is not an ingredient of Section 14(3)(c) of the Act and, therefore, could not be a condition precedent to the entitlement of the landlord for eviction of the tenant, but depending on the facts and circumstances of each case, the Court may look into the availability of building plans duly
G sanctioned by the local authorities for the purpose of determining the bonafides of the landlord.

9. In the present case, the Controller has held in the orders of eviction that the appellant had admittedly obtained sanction from the Municipal Corporation, Shimla and that the building
H was an old one and that the appellant was occupying the

second floor of the building and that rebuilding or reconstruction cannot be carried out without the building being vacated by the respondents. The Controller has accordingly arrived at a satisfaction that the appellant bonafide requires the building for the purpose of building or rebuilding and has accordingly issued the direction in terms of sub-section (4) read with clause (c) of sub-section (3) of Section 14 of the Act to the respondents to put the appellant in possession of the building. This order of the Controller was challenged by the respondents in appeal but the Appellate Authority has dismissed the appeal. Thereafter, the respondents filed the Civil Revisions before the High Court challenging the orders of the Controller and the orders of the Appellate Authority, and the High Court has in the impugned common order maintained the orders passed by the Controller and the Appellate Authority subject to the modifications mentioned in para 27 of its order. Para 27 of the impugned order of the High Court is quoted hereinbelow:

> "Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed. However, in the interest of justice, in view of the judgment rendered by their Lordships of the Hon'ble Supreme Court in *Harrington House School* v. *S.M. Ispahani & Another* (2002) 5 SCC 229, though the orders passed by both the authorities are upheld/ sustained, however, it is 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 valid revised/ renewed sanctioned or approved building plan shall be produced before the executing court whereupon the executing court shall allow a reasonable time to the tenants for vacating the property and delivering possession to the landlord. Till then the tenant shall remain liable to pay charges for use and occupation of the premises at the same rate at which they are being paid earlier. Subject to these modifications, the orders passed by both the authorities below are

A maintained. No costs."

10. We also find that the respondents challenged the impugned order of the High Court separately in Special Leave Petition (Civil) Nos. 14028 and 2971 of 2012, but this Court dismissed the Special Leave Petitions of the respondents. The B result is that the findings of the Controller regarding the claim of the appellants for eviction of the respondents on the ground that the appellant bonafide requires the building for rebuilding or reconstruction as affirmed by the appellate authority and the High Court have become final could not be reopened on any C ground whatsoever and the respondents cannot now contend that the appellant cannot any longer construct or reconstruct the building on account of drastic changes in the building regulations within the city limits of Shimla.

11. In fact, the only question that we have to decide in this D appeal filed by the appellant is whether the High Court could have directed that only on the valid revised/renewed building plant 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* E 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 F 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, G 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 H 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. 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.

12. 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.

B.B.B. Appeals allowed.