

(1999) 08 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 789 of 1983

Chanderwati and Another

APPELLANT

Vs

Ashwani Kumar

RESPONDENT

Date of Decision: Aug. 10, 1999

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 15, 15(1), 2

Citation: (2000) 124 PLR 162 : (2000) 1 RCR(Rent) 432

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: R.S. Chahar, for the Appellant;

Final Decision: Allowed

Judgement

R.L. Anand, J.

This is a rent revision and has been directed against the judgment dated 13.11.1982 passed by Appellate Authority, Rohtak, who dismissed the appeal of Chanderwati widow of Chander Singh and Punam daughter of Chander Singh holding that the same was not maintainable. The appeal was directed against the judgment dated 1.9.1982 passed by Rent Controller, Jhajjar, who allowed the petition u/s 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as "the Act") filed by Ashwani Kumar.

2. The brief facts of the case can be noticed in the following manner:-

Ashwani Kumar filed the petition u/s 13 of the Act for the ejection of respondent from 4 shops shown in site plan attached with the petition in red colour marked ABCD and fully enumerated in para No. 1 of the petition situated at Jhajjar. The grounds of eviction were that the respondent/tenant had neither paid nor tendered the arrears of rent @ Rs. 105/- per month for the period 31.1.1979 to 31.7.1979 amounting to Rs. 630/- that the respondent had ceased to occupy the demised premises for the last more than 6 months and the same was lying locked and earlier

the demised premises was being used by her as office for the purpose of running business of scooter and taxi etc. on hire and she had impaired the value and utility when she broke the floor of the shops and spoiled the premises.

Notice of the petition was given to the tenant, who admitted her tenancy @ Rs. 105/-per month but she denied the other allegations by stating that she had paid the arrears of rent on the basis of the assessment made by the learned Rent Controller in the Court and that she had not ceased to occupy the premises. Moreover, she had not impaired the value and utility of the property, hi the additional objections, the tenant took a stand that she has constructed shed in front of the shops in dispute at a cost of Rs. 10,000/- with the consent of the landlord and in the event of her ejectment, she will be entitled to get this amount from the landlord. She further stated that she was involved in a murder case vide F.I.R. No.94 of 1977 of which the occurrence took place in the shops in dispute and the matter is pending before the Hon"ble High Court. The shops in dispute being the case property of that case, the petition is not maintainable till the decision of the criminal matter. She also pleaded that she had not ceased to occupy the demised premises and the landlord is estopped by his own acts and conducts from filing the rent petition, who has not served any notice terminating her tenancy before filing the petition and as such the petition is not maintainable.

3. The landlord filed a re-joinder to the written statement in which he reiterated the allegations made in the petition by denying those of the written statement and from the pleadings of the parties, the learned Rent Controller framed the following issues:-

1. Whether the respondent is liable to be ejected from the shops in dispute on the grounds mentioned in the application? OPA
2. Whether the respondent has got erected any structure on the disputed shops and if so the amount thereof? OPA
3. Whether the petition is liable to be dismissed as alleged in additional objection No.2? OPR
4. Whether the applicant has not served any notice u/s 106 of the T.P. Act for termination of the tenancy and if so to what effect? OPR
5. Whether the application is not maintainable as alleged in additional objection No.3? OPR
6. Whether the respondent is entitled to special costs u/s 35 C.P.C.? OPR
7. Relief.

4. The parties led oral as well as documentary evidence in support of their case. The ground of non-payment of rent was given up by the landlord on 12.9.1979 after receiving the tender made by the tenant amounting to Rs. 689/-. The parties

contested the petition on the grounds as to whether the tenant has ceased to occupy the demised premises without any sufficient cause for a continuous period of six months prior to the filing of the petition and whether the tenant has materially impaired the value and utility of the property as alleged by the landlord and if so to what effect. The Rent Controller held that the respondent ceased to occupy the shops in dispute for a continuous period of four months prior to the date of filing of the petition and further that the tenant had impaired the value and utility of the property. Resultantly, issue No. 1 was decided in favour of the landlord and against the respondent. Issue No.2 was also decided against the respondent by holding that the respondent erected the cement shed on the committee land but not in front of the shops in dispute. Issues Nos. 3, 4, 5, and 6 were also decided against the tenant and finally the Rent Controller allowed the petition and passed the ejectment order.

5. It may be mentioned here that during the pendency of the petition, the original tenant died and the present petitioners Smt. Chanderwati and Punam were added as legal heirs vide order dated 15.2.1982.

6. The legal heirs of Chander Singh filed the appeal u/s 15 of the Act and a preliminary objection was taken by the landlord that the appeal was not maintainable. The learned Appellate Authority after discussing the relevant case law came to the conclusion that the appeal of the legal heirs of the tenant was not maintainable. Aggrieved by the finding of the Appellate Authority, the present revision.

7. The point which survives for determination is whether the petitioners had the locus standi to file the appeal before the Appellate Authority or not. The learned Appellate Authority relied upon the judgment? of the Hon"ble Supreme court reported as Daljeet Singh and Ors. v. Gurmukh Dass 1981(2). R.L.R. 204, [Ganpat Ladha Vs. Sashikant Vishnu Shinde](#), , besides the judgment given by Hon"ble Mr. Justice J.V. Gupta, in R.S.A. No. 2715 of 1980 Om Parkash v. Smt. Kailash Wati, Section 2(h) of the Act lays down as follows:-

"2(h) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy and in the event of such person"s death. Such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market cart stand or slaughter-house or of rents for shops has been framed out, or leased by a municipal town or notified area committee;"

Word "building" has also been defined in Section 2(a) of the Act, which means as follows:-

"Building" means any building or a part of building let for any purpose whether being actually used for that purpose or not including any land, godown, out-houses, gardens, lawns, wells or tanks appurtenant to such building or the furniture let there with or any fitting affixed to or machinery installed in such building, but does not include a room in a hotel, hostel or boarding house."

Schedule u/s 2(h) enumerates the following persons:-

Son, daughter, widow, father, mother, grand-father, grand-mother, son of a pre-deceased son, unmarried daughter or a pre-deceased son, widow of a pre-deceased son and widow of a pre-deceased son of pre-deceased son."

The combined reading of the above provisions would show that the legislature has given a protection not only to a tenant but also to all those persons who are mentioned in the Schedule irrespective of the nature of the demised premises. The matter was also considered by the Full Bench of this Court in *Harish Chander and Ors. v. Kirpa Ram* (1986)89 P.L.R. 164 and it was held that tenancy in respect of "non-residential building" as defined in Section 2(d) of the Act in the event of death of tenant devolves on the heirs of deceased tenant in accordance with general law of succession applicable to the tenant and heirs who step into shoes of deceased tenant continue to enjoy protection afforded by the Haryana Act. This Full Bench was later on followed in *Smt. Laxmi Devi v. Mehta Thakar Doss* 1992(2) R.L.R. 652 and [Bundu Khan and Another Vs. Smt. Bhagwati Devi and Another](#). Thus, in view of the settled position of law, the finding given by the learned Appellate Authority is now sustainable.

8. Resultantly, the present revision succeeds. The order of the Appellate Authority is hereby set aside by holding that the legal representatives of the tenant could prosecute and proceed with the appeal u/s 15 of the Act. Since the Appellate Authority has not given any decision on the merits of the case, therefore, the case is remanded back to the Appellate Authority, Rohtak, who shall register the appeal on its original number and shall dispose of the same on merits.

Registry is directed to send the records of the lower courts to the Appellate Authority, who shall give notice to the parties before proceeding into the matter.