

(2002) 10 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2050 of 1998

Rajinder Lal

APPELLANT

Vs

Bhushan Monga

RESPONDENT

Date of Decision: Oct. 11, 2002

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13A

Citation: (2003) 133 PLR 472 : (2003) 1 RCR(Rent) 242

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: P.K. Kukreja, for the Appellant; Chetan Mittal, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

This is a petition filed by the owner claiming that the respondent was inducted as a tenant in the month of March, 1992 at the rate of Rs. 2000/- per month. The present petition has been filed u/s 13-A of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act) for eviction of the tenant on the ground that he has retired on 16.10.1992 and, therefore, the petitioner requires the demised premises for his personal use and occupation.

2. The respondent in written statement stated that he has been in fact a tenant by Smt. Ramesh Kumari. It is further stated that Ramesh Kumari has entered into an agreement to purchase the property and has paid the entire sale consideration. She has also filed a suit for specific performance which is pending for final adjudication.

3. The learned Rent Controller after giving opportunities to the parties held that there is no relationship between the landlord and tenant and consequently dismissed the revision petition.

4. In the present revision petition, learned counsel for the petitioner has argued that the trial court has not framed any issue regarding the relationship of landlord and tenant. It is, however, admitted that there is no written statement to prove that respondent was inducted as tenant in the month of March, 1992 at the rate of 2000/- per month.

5. The petitioner has examined seven witnesses and apart from them he has himself appeared as his own witness. Parties were well aware of the controversy regarding the relationship of landlord and tenant inasmuch as respondent has stated in the written statement itself that he is not tenant of the petitioner and in fact tenant of Ramesh Kumari with whom petitioner has entered into an agreement to sale.

6. Parties were aware of controversy and has led evidence. It is not permissible for the petitioner to state that he was misled on account of non-framing of proper issue. Petitioner has not moved the Rent Controller to frame an issue regarding relationship between the landlord and tenant. The parties have led sufficient evidence on the question of relationship of landlord and tenant and therefore, the argument that the petitioner did not have the sufficient opportunities is unreliable. Even otherwise, Rent Controller will have jurisdiction to entertain petition only if there is relationship of landlord and tenant between the parties.

7. The parties before the Rent Controller addressed on the question whether the petitioner Ramesh Kumari is the owner and the question whether Ramesh Kumari was handed over the possession or not. It is admitted by the petitioner that there is no document of tenancy. Petitioner has not produced any document such as his diary which he was allegedly maintaining regarding receipt of rent. It is evident that the petitioner has not been able to prove the tenancy in favour of respondent inasmuch as the document of agreement to sell are purported to be executed on 4.4.1992 with the sister of respondent. It is highly impossible stand of the petitioner having inducted respondent as tenant in March, 1992. Even if the petitioner is owner of the premises, in the absence of respondent being inducted as a tenant he cannot claim the ejectment of the respondent u/s 13-A of the Act. The only option available to the petitioner is to seek possession of the property as owner if the respondent is in unauthorised possession of the same.

8. Counsel for the respondent has relied upon *Mohinder Singh v. Ram Nath*, 1985(1) RCR 642 to contend that mere fact that the petitioner is owner of the premises, he would not be deemed to be landlord qua the respondent. The authorities under the Act will have the jurisdiction only if relationship between landlord and tenant is proved. If such relationship is not proved, the owner is entitled to seek the possession from the competent Court of law and not from the authorities under the Act. Since the petitioner has failed to prove himself landlord of the premises in dispute qua respondent, I do not find any illegality or irregularity in the order passed by the Rent Controller. Consequently, petition is dismissed. It may be clarified that nothing said herein shall effect the civil suit pending against the

petitioner regarding specific performance of agreement to sell allegedly executed by the petitioner.