(1983) 03 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1943 of 1976

Gita Devi		APPELLANT
	Vs	
The Financial Commissioner and Others		RESPONDENT

Date of Decision: March 8, 1983

Acts Referred:

- Constitution of India, 1950 - Article 226
- East Punjab Urban Rent Restriction Act, 1949 - Section 13

Citation: (1983) 2 ILR (P&H) 511

Hon'ble Judges: I.S. Tiwana, J

Bench: Single Bench

Advocate: H.L. Sarin, M.L. Sarin and R.L. Sarin, for the Appellant; A.N. Mittal and Viney Mittal for Nos. 3 and 4, for the Respondent

Judgement

I.S. Tiwana, J.

The short but interesting controversy raised in the petition under Article 226 of the Constitution of India relates to the question as to whether/if by a stipulation between the landlord and tenant, the tenant agrees to pay house tax imposed by a Municipal Committee along with rent for the use and occupation of the demised premises, the said tax forms part of the rent or not. In order to appreciate the contention raised, the following facts deserve to be noticed.

2. The Petitioner-landlady brought an application u/s 13 of the East Punjab Rent Restriction Act, 1949 (for short, the Act) as amended and applicable to the State of Haryana for the eviction of the Respondent-tenants on two grounds (i) non-payment of rent and (ii) subletting. The Rent Controller (S.D.O. Civil) and the appellate authority (Deputy Commissioner) upheld the above-noted stand of the Petitioner and ordered the eviction of the Respondents.

However, on revision the Financial Commissioner (H), -wide his impugned order dated February 25, 1976 (Annexure P.3) through rather queer reasoning held that the house tax (Rs. 5.40 per annum) did not form part of the settled rent (Rs. 1,450 per annum) as the said rent had not been increased to that extent in terms of Section 9 of the Act. The following observations made by the Financial Commissioner clearly depict the process of reasoning adopted and the conclusion recorded by him:

It would make no difference even if the landlord showed that the tenant had agreed to pay such rates, cesses and taxes. In certain circumstances rates, cesses or taxes are u/s 9 permitted to be incorporated in rent through an increase in it; and if the rent thus increased lawfully is not paid, a tenant may be evicted. But a landlord cannot evict a tenant u/s 13 of the Act on account of the non-payment merely of rates, cesses and taxes even if such rates, cesses and taxes were of the type on account of which rent could have been legitimately increased, but was not. In this case, therefore, the Rent Controller having found that the rent due was only Rs. 1,450 per annum and the due rent with interest and costs having been paid, the tenant could not be evicted even if it be presumed that he had agreed to pay the house tax also and not paid it.

3. After hearing the Learned Counsel for the parties, I find it difficult to sustain the impugned order. It is no doubt true that tenants-tenants tendered the amount of rent (at the rate of Rs. 1,450 per year) along with interest and costs on the first date of hearing and on that account if it is held that the house tax did not form part of the rent, the ground of "non-payment of rent" disappears but I find in this case that the house tax in question did form part of the rent and thus the tender made by the Respondents does not save their eviction. It deserves to be noticed here that the case as pleaded by the parties, does not at all attract the provisions of Section 9 of the Act. It is no body''s case that the house tax in question had been imposed by the Municipal Committee subsequent to the creation of the tenancy in favor of the Respondents, and therefore, in order to recover or to ask for the payment of the same, the Petitioner should have increased the "settled rent" in accordance with Section 9 of the Act.

4. On the other hand, the precise case pleaded by the Petitioner throughout was that right from the beginning or inception of the tenancy tenants-tenants had agreed to pay house tax along with the above-noted rate of rent. The stand taken by the Respondents that they had not agreed to pay the house tax has been clearly negative by both of the subordinate authorities i.e. the Rent Controller and the appellate authority by recording a firm finding that tenants-tenants had agreed to pay the said tax along with rent. In the light of this finding it was further held that the tender made by them was not proper and complete. To my mind, the matter appears to be completely settled against the Respondents by the following observations of the Supreme Court in Karani Properties Ltd. v. Miss Augustine AIR

1957 S.C.409 where in the question as to whether if by a stipulation between the landlord and the tenant the landlord agrees to provide for additional amenities, like electric power for consumption and such other facilities, the charges for the same would form part of the rent under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was answer-ed as under:

The term ''rent'' has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the buildings and its appurtenances but also of furnishing, electric installations and other amenities agreed between the parties to be provided by and at the costs of the landlord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act and the Rent Controller and other Authorities had the power to control the same.

5. It is not a matter of dispute between the parties that in the Act too, no definition of "rent" has been provided for. Thus, in view of the above observations and the firm findings recorded by the trial Court and appellate authority that tenants-tenants had agreed to pay house tax along with the rent there is no escape from the conclusion that the said tax did form part of the rent and in the absence of the tender of the same there was no legal or valid tender and the Respondents cannot escape the liability of eviction. In the light of his conclusion of mine, the reference made by the Learned Counsel for the Respondents to the two Single Bench judgments of this Court in Hari Krishan v. Dwarka Dass 1969 P.L.R. 30. and Smt. Kirpal Kaur v. Bhagwant Rai 1969 P.L.R. 238. dealing with the cases where the house tax had been levied or assessed subsequent to the creation of tenancies and thus could not be recovered along with rent unless the same (rent) had been increased in terms of Section 9 of the Act has no relevance to the facts of this case. The Submission of the Learned Counsel that even if the impugned order Annexure P. 3 suffers from the above-noted infirmity, the same cannot be interferred with in exercise of this extra ordinary jurisdiction under Article 226 of the Constitution is devoid of merit for the short reason that the said order suffers from a mistake on the face of the record and cannot be sustained.

6. I, thus allow this petition and while setting aside Annexure P.3 restore that of the appellate authority. The Petitioner is also held entitled to the costs of this litigation which I, determine at Rs. 300.