# Ramanand Shastri Vs Gian Singh

## Civil Revision No. 1117 of 2003

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** March 6, 2003

**Acts Referred:**
East Punjab Urban Rent Restriction Act, 1949 â€" Section 15(5)

**Citation:** (2003) 3 CivCC 62 : (2003) 1 RCR(Rent) 735

**Hon'ble Judges:** M.M. Kumar, J

**Bench:** Single Bench

**Advocate:** Ashok Pruthi, for the Appellant;

**Final Decision:** Dismissed

## Judgement

M.M. Kumar, J.
This petition filed under sub-section (5) of Section 15 of East Punjab Urban Rent Restriction Act, 1949, is directed

against the concurrent findings of facts recorded by both the Courts below that the relationship of landlord and tenant exists between the parties

and the landlord-respondent has rented the demised premises to the tenant-petitioner @ Rs.800/- p.m. and he has failed to pay the rent w.e.f.

1.4.1987. It has further been held that the tenant-petitioner has made additions and alterations causing material impairment to the value and utility

of the premises. The views of the Appellate Authority while affirming the findings of facts recorded by the Rent Controller read as under:

After hearing counsel for the parties, 1 find that the appeal is liable to be dismissed because admittedly the appellant had been in possession of the

demised premises as a tenant under Gian Singh and he had been paying rent to him. The appellant alleges that in December, 1995 he had handed

over possession to Gian Singh which is denied and Ld. counsel for the appellant could not show any evidence to prove that he had surrendered

possession in favour of Gian Singh. Now by way of additional evidence, the appellant wants to prove that possession was delivered to Gian Singh

by the appellant and it was taken over by the Punjab Wakf Board. No documentary evidence has been sought to be produced to prove the

delivery of possession to the Punjab Wakf Board. It is only stated that the possession was delivered to Punjab Wakf Board in the presence of

three witnesses mentioned in the application. Firstly, the appellant could produce this oral evidence at the time when he was afforded opportunity

to lead evidence as the witnesses were known to him and he was also in the knowledge of the ground taken by him that possession was delivered

to the Punjab Wakf Board by Gian Singh. Secondly, even if the said witnesses are examined by the appellant in his favour, no reliance can be

placed on the testimony of those witnesses as they will be deposing orally and the surrending of possession by the appellant in favour of Gian Singh

and taking over the same by Punjab Wakf Board could be proved only by documentary evidence. Therefore, no case is made out for allowing

additional evidence. It is proved from the documentary evidence that the appellant never surrendered possession in favour of Gian Singh.

Previously, the appellant had filed a suit for injunction restraining respondent Gian Singh from dispossessing him forcibly on the allegations that

appellant was occupying the property in dispute as a tenant @ Rs.800/- p.m. The fact was admitted by Gian Singh that appellant was occupying

the building as a tenant at a monthly rent of Rs.800/- and a statement was made by counsel for Gian Singh that the appellant shall not be

dispossessed otherwise than in due course of law. The previous suit was then dismissed on 3.1.1996. Therefore, the plea of the appellant that he

had surrendered possession in favour of Gian Singh and he was allotted the property in dispute by Punjab Wakf Board in December, 1995 stands

falsified.

2. I have heard Shri Ashok Pruthi, learned counsel for the tenant-petitioner who has argued that in accordance with the judgment of the Supreme

Court in the case of Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, , the Rent Controller should have made an

interim assessment for payment of rent to the landlord-respondent. In the absence of assessment order framed by the Rent Controller, the

directions issued by the Supreme Court in the case of Rakesh Wadhawan (supra) - would stand violated. The learned counsel has also made an

attempt to persuade me to accept the view that the landlord-respondent was not his landlord and the property in dispute is now owned and

possessed by the Wakf Board.

3. I have thoughtfully considered the submissions made by the learned counsel for the tenant-petitioner and am of the view that the same are

devoid of merit. The first submission that the tenant-petitioner was entitled to an order of assessment by the Rent Controller in terms of the law laid

down by the Supreme Court in the case of Rakesh Wadhawan (supra) would not require any detailed consideration because in cases where the

tenant disputes the relationship of landlord and tenant it is not expected of the Rent Controller to pass an assessment order of rent directing the

tenant to pay that rent. In such cases, exercise to be taken by the Rent Controller would be futile and would rather go contrary to the stand of the

parties. After all framing of assessment order is not a mere ritual by the Rent Controller that in every case the Rent Controller must pass such an

order. Moreover, even if the Rent Controller passes such an order and the tenant maintains his stand of denying the relationship then he cannot be

asked to pay the rent. It would also be unjust that the tenant would first get the finding of subsisting relationship and then deposit the rent. Such a

course would also be unfair and unjust to the landlord-respondent. Therefore, I have no hesitation in rejecting the first argument raised by the

learned counsel. The other argument that the demised premises has now been notified to be the property of the Wakf Board would also not

require any serious consideration because the rent claimed is from 1.4.1987 and me suit filed by the tenant-petitioner was dismissed on 3.1.1996

in which an injunction was sought restraining the landlord-respondent from dispossessing the tenant-petitioner forcibly. In that suit, the averments

were made by the tenant-petitioner admitting the relationship of landlord and tenant and also rate of rent which was stated to be Rs.800/- p.m.

Landlord-respondent Gian Singh stated before the Civil Judge that he would not forcibly dispossess the tenant-petitioner except by due course of

law and in view thereof the suit was dismissed on 3.1.1996.

4. In view of the above, nothing could be said that the property has been handed over by the tenant-petitioner to the landlord-respondent for its

onward submission of possession to the Wakf Board. No document has been placed on record to that effect. Therefore, I do not find any merit in

the second submission made by the learned counsel. The appeal is without merit and is thus liable to be dismissed.

For the reasons recorded above, this petition fails and the same is dismissed.