

Kesar Singh Vs The Financial Commissioner and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 30, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 145
East Punjab Urban Rent Restriction Act, 1949 â€” Section 13, 13(2)(i)

Citation: (2013) 172 PLR 115 : (2013) 4 RCR(Civil) 358

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Prem Nath Aggarwal, for the Appellant;

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.

This order shall dispose of three writ petitions bearing CWP Nos. 16264, 16268 and 16283 of 2013 as the facts

and law involved in these cases are identical. However, for the sake of convenience, the facts are being extracted from CWP No. 16264 of 2013.

Respondent no. 5-landlord filed an application u/s 14-A of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the "Act")

for seeking ejectment of the petitioner from the land in dispute on the ground of non-payment of arrears of rent w.e.f. Rabi 1993. As per the case

of respondent no. 5, the rate of rent was Rs. 6,000/- per acre per year, whereas the stand of the petitioner in the written statement was that the

rate of rent was Rs. 100/- per acre per year.

2. The positive stand of the petitioner in the written statement is that the application for ejectment is not maintainable because the rent @ Rs. 100/-

per acre per year has already been paid.

3. The petitioner also alleged that the land owner has not been issuing receipts after receiving the rent. In the proceedings u/s 145 of the Code of

Criminal Procedure, 1973, the land owner offered to sell the land to the petitioner @ Rs. 24,000/- per acre and the petitioner had already paid Rs.

35,000/-. However, in the rejoinder filed by the land owner, it is averred that the rent was Rs. 6,000/- per acre per year and Rs. 35,000/- was

received as rent and not the sale price.

4. According to the zimni orders produced by the petitioner, on 26.10.1995, when the case was adjourned for filing of the written statement, the

petitioner was asked that if he wants to deposit the amount of the disputed crops of the land in dispute, then he can do so before the date fixed but

the said opportunity was not availed and since the petitioner was consistent on his stand that the rate of rent was Rs. 100/- per acre per year, he

deposited the same later on, which was not accepted by the land owner on the ground that the amount of batai is less.

5. After the pleadings were over, the parties led their respective evidence and Assistant Collector 1st Grade passed the order of ejectment on

09.11.2011 on the ground that the petitioner has failed to prove the payment of Rs. 100/- per acre per year towards rent and no evidence has

been brought on record to prove that the land in question was sold to the petitioner by the landlord @ Rs. 24,000/- per acre.

6. Aggrieved against the order dated 09.11.2011, the petitioner filed appeal in which besides challenging the findings of the Assistant Collector 1st

Grade on merits, it is also pleaded that the proviso has been added to Section 14-A of the Punjab Security of Land Tenures (Haryana

Amendment) Act, 1991 (hereinafter referred to as the ""Amended Act"") as per which the Assistant Collector 1st Grade was obliged to assess the

arrears of rent with interest and costs required to be paid by the petitioner and should have given 15 days time for this purpose which has not been

done and, therefore, the order of ejectment is bad in law.

7. Although the aforesaid ground was taken in the memo of appeal but from the order of the Collector, Karnal, dated 24.01.2012, it transpires

that the said plea was not pressed as there is no finding recorded in this regard.

8. The petitioner then filed revision before the Commissioner which was also dismissed on 06.07.2012 in which the issue with regard to

Section 14-A(1) has been discussed and it has been held that the Assistant Collector 1st Grade had granted opportunity to the petitioner to deposit

the batai but he did not deposit it. It was also observed that the petitioner could not produce any evidence to prove that he has been paying the

rent Rs. 100/- per acre per year and has also not produced any evidence to prove that the said rent has already been paid. Hence, the order of the

ejectment was maintained.

9. The petitioner filed another revision u/s 24 of the Act before the Financial Commissioner which was also dismissed on 15.07.2013, inter alia,

observing that the eviction application was filed in the year 1995 which was finally decided by the Assistant Collector 1st Grade on 09.11.2011,

i.e. after a period of 16 years, after affording ample opportunities to the petitioner to deposit the rent claimed by the respondent no. 5. However,

the stand taken by the petitioner was that the rate of rent was Rs. 100/- per acre per year, which has already been paid and the petitioner is not

liable to pay any arrears.

10. In these petitions, counsel for the petitioner has vehemently argued that Section 14-A(1) of the Amended Act is para materia to Section 13(2)

(i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the "1973 Act") and the East Punjab Urban Rent

Restriction Act, 1949 (hereinafter referred to as the "1949 Act"), which are interpreted by the Supreme Court in the case of Rakesh Wadhawan

and Others Vs. Jagdamba Industrial Corporation and Others, , holding that the Rent Controller has to first provisionally assess the arrears of rent,

interest on such arrears and the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must

pay or tender on the first date of hearing to avoid the ejectment. He has also referred to a decision of this Court in the case of Amar Singh and

others v. Financial Commissioner, Haryana and others, 2006 (1) PLJ 270.

11. I have heard counsel for the petitioner and perused the record.

12. There is no quarrel with the proposition that Section 14-A(1) of the Amended Act is para materia to Section 13(2)(i) of the 1949 Act and the

1973 Act. However, the proposition propounded by the petitioner in this case does not flow from the decision in Rakesh Wadhawan's case

(supra).

13. In Rakesh Wadhawan's case (supra), the facts were that the tenant entered into tenancy under rent note dated 20.09.1985 at an agreed rate

of rent @ Rs. 2,000/- per month. The tenant neither paid nor tendered the arrears of rent from 01.03.1985 and the petition was filed on

19.09.1991 seeking eviction on the ground of non-payment of rent. In the written statement, the tenant admitted to have executed the rent note

reciting the rate of rent at Rs. 2,000/- per month, other than water and electricity charges, but submitted that the rate of rent so appointed was

never intended to be acted upon and the real monthly rent of the premises was Rs. 1,800/- per month. In the family litigation, to which the tenants

were not a party, in terms of the order passed by the Civil Court, rent @ Rs. 1,800/- per month was deposited for the period October, 1985 to

January, 1988. The rent for the period upto September, 1985 was paid to the landlords but the subsequent arrears accumulating, owing to

infighting amongst the legal heirs, for the period 01.02.1988 to September, 1991, i.e. for 44 months, amounting to Rs. 79,200/- plus interest Rs.

8,910/- and costs Rs. 75/- totaling Rs. 88,185/- were tendered before the Rent Controller on 14.11.1991. The Rent Controller held that the rate

of rent of the demised premises was Rs. 2,000/- per month excluding water and electricity charges. The amount tendered by the tenant was found

to be short and, therefore, invalid and consequently, at the end, the tenants were ordered to be evicted.

14. The tenant preferred appeal which was allowed holding that the rate of rent was @ Rs. 1,800/- per month at which rate the arrears had stood

cleared and, therefore, the tenants were not liable to be evicted. The Civil Revision filed by the landlord was dismissed by the High Court on the

ground that the finding of fact arrived at by the Appellate Authority was not liable to be interfered with.

15. The Apex Court determined the rate of rent @ Rs. 2,000/- per month and held as under:-

25. What follows from the abovesaid discussion is that the proviso to clause (i) of sub-section (2) of Section 13 must be read as obliging the

Controller to assess, by means of passing an order, the arrears of rent, the interest and the costs of litigation-all the three, which the tenant shall pay

or tender on the first date of hearing of the main petition following the date of such assessment by Controller. Such order based on in opinion

formed prima facie by perusal of the pleadings and such other material as may be available before the Controller on that day would be an interim

or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute

between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the costs of

application in the light of and to the extent of dispute, if any, raised by the tenant.

16. Insofar as the ratio of law laid down in Amar Singh's case (supra) is concerned, it has been held that Section 14-A(i) of the Act is para

materia to the proviso to Section 13(2)(i) of the 1949 Act and the 1973 Act.

17. The question involved in this case is altogether different because the preliminary objection in the written statement of the petitioner is that the

application for ejectment is not legally maintainable as the petitioner has already paid the rent @ Rs. 100/- per acre per year. The petitioner has

also tendered the rent @ Rs. 100/- per acre per year in the Court lateron. Once the tenant denies the liability to pay the rent, the question of

assessment would not arise. In this regard, reference could be made to the various decisions of this Court in the cases of Hukma Devi v. Bhagwan

Dass, 2003 (1) RLR 528, S.K. Kalia Vs. Om Parkash and Others, , Mrs. Preeti Vs. Manmohan Singh and Another, and M/s. Belliss India

Limited 18, Community Centre, East of M/s Belliss India Limited 18, Community Centre, East of Kailash, New Delhi Vs. Shri Ram Chand Gupta

(dead) through his LRs and others,

18. In Hukma Devi's case (supra), it was held by this Court while interpreting Section 13(2)(i) of the 1949 Act that the object of making

assessment of the arrears of rent, interest and costs by the landlord is that in case there is a dispute with regard to rate of rent or the period of rent,

house tax, cost and interest etc. then he may not suffer because of short tender, but in a case where the tenant refuses the liability to pay the rent,

the question of assessment would not at all arise and reliance was placed upon a judgment of the Supreme Court in the case of Sheela and Others

Vs. Firm Prahlad Rai Prem Prakash, .

19. In S.K. Kalia's case (supra), the tenant, in his written statement, contended that he has been paying rent without any receipt and has paid

entire amount of rent and is not in arrears of rent. In these circumstances, it was held that if the tenant has taken a false plea that he has paid the

entire amount of rent without any receipt, he is liable to be evicted.

20. In Mrs. Preeti's case (supra), it was held that where a tenant, proceeds to dispute the locus standi or the ownership of the landlord and

thereupon denies the relationship of landlord and tenant, such a tenant in essence, asserts a positive plea of refusal to tender rent because his

motive is to prolong the proceedings, evade responsibility for payment of rent or to harass the landlord and for that matter, the ratio in Rakesh

Wadhawan's case (supra) would not apply.

21. In M/s. Belliss India Limited's case (supra), the tenant did not deny the relationship of landlord and tenant but claimed that it had spent a

particular amount in installation of a tube-well, construction of service road connecting the factory to the main road and for repair and paint of all

the three sheds and claimed that the Rent Controller may determine the rent after setting off the said amount together with interest accrued thereon

after which the said amount shall be paid. The Rent Controller passed the order of eviction without any assessment. The question before this Court

was that "whether the Rent Controller is obliged to assess the exact amount of arrears of rent by calculating the interest and cost in terms of first

proviso to Section 13(2)(i) of the Act or he is not obliged to assess the provisional rent in case where the tenant makes a specific statement

refusing to tender the rent?" The said question was decided in affirmative to the effect that the Rent Controller is not obliged to assess the

provisional rent even if the tenant had made the prayer thereafter, i.e. after the expiry of the statutory period of 15 days.

22. Since in the present case, the positive stand of the petitioner is that he had already paid the rent, meaning thereby that he was not obliged to

pay the rent, as demanded by the landlord, there was no occasion for the Assistant Collector 1st Grade to resort to Section 14-A(1) of the Act.

However, an opportunity was given by the Assistant Collector 1st Grade on 29.10.1995 to the counsel for the petitioner therein that if he wants to

deposit the amount of the disputed crops of the land in dispute, then he can do so before the next date of hearing but as the positive stand of the

petitioner was that he has already made the payment and is not in any arrears, therefore, he did not call upon the Court to determine the rent,

interest, costs etc. and the Assistant Collector 1st Grade has rightly ordered eviction of the petitioner though the matter remained pending before it

from the year 1995 till 2011 when it was finally decided. Thus, in view of the aforesaid discussion, I do not find any merit in the present writ

petitions and hence, all the three writ petitions are hereby dismissed.