

(2009) 04 P&H CK 0039
In the Punjab And Haryana At Chandigarh

Amir Chand

APPELLANT

Vs

G.R. Dhira

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

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

Citation : (2010) 159 PLR 7 : (2010) 3 RCR(Civil) 641 : (2010) 2 RCR(Rent) 129

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The tenant who was ordered to be evicted in a petition filed u/s 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the "Act") in his alleged capacity as a "specified landlord" is the revision petitioner before this Court. On behalf of the tenant three contentions are raised i) The landlord who was reported to be retired as a Dy. Manager from United India Insurance Company and he could not be stated to have held an appointment in a public service or post in connection with the affairs of the Haryana or of a State within the definition of specified landlord and consequently the petition u/s 13-A was not maintainable. ii) There was no form of tenancy between the parties and the petitioner who was not entitled to receive rent on his failure to establish such jural relationship ought not to be granted an order of eviction. iii) The property which was the subject to dispute was situate at Hospital Road, Phillaur and it was not an urban area to which the provisions of Act was applicable, the burden of which was on the landlord to establish the applicability of the Act and it has not been established.

2. As regards the first contention that an employee of a United Insurance Company could not be said to be a person holding an appointment in public service or post. Learned Counsel refers to the definition of a specified landlord u/s 2(hh) of the Act which is as follows:

2(hh) "specified landlord" means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service of post in connection with the affairs of the Union or of a State". Learned Counsel for the petitioner points out to the fact that the person ought to be in a public service or the post must be in connection with the affairs of the Union or a State. A person who is an employee of a company as such is the United India Insurance Company, though may be wholly owned by the Central Government, was still not an appointment in a public post and it was not connected with the affairs of the Union or the State. Learned Counsel refers me to the decision in *New India Assurance Co. Ltd. Vs. Smt. Krishna Sharma and Others*, which dealt with the case of a issue relating to the nature of document of certificate of insurance as to whether the Officer of Insurance Company are Public Officers and whether an Insurance Policy is a Public document. The question was posed in a case coming under the provisions of Motor Vehicles Act. The Court found that employees of an Insurance Company are not performing statutory obligations or public duties and the officer of an Insurance Company could not be said to be a Public Officer.

3. This decision, in my view, is drowned in its effect and relevance while matching it with two decisions of the Supreme Court that addresses the issues squarely covered in *Ram Gopal Sharma v. Sukhdev Raj Rudra*, (2001) 9 SCC 201 . The point that was directly raised was whether an employee of LIC held an office as a Public Servant and hence a "specified landlord" u/s 2(hh) of the Act. The Court approached the issue through the prism of the function of Article 12 of the Constitution that had a bearing to definition of a State or its functionality. The Supreme Court observed that even apart from a concession given by the counsel that LIC was a State under Article 12 of the Constitution, the decision in *State Vs. O.P. Dogra and Others*, laid down, which while interpreting Section 21 of Ranbir Penal Code, 1989, that an employee of LIC came within the definition of expression "Public Servant". It held that an employee of LIC was therefore, a specified landlord under the Act. If an employee of LIC was a "specified landlord", a fortiori by the same token of reasoning an Officer in United India Insurance Company is also a "specified landlord" under the Act. Learned Counsel for the respondent refers to a 7 member bench decision of the Supreme Court in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, where the issue was the best on what was a State or an instrumentality, when it said that the concept of the State under Article 12 had undergone drastic changes and reasoned that organizations such as ONGC, IFCI and LIC were all treated as coming within the definition of "State" under Article 12". The finding relating to the status of the petitioner that he was a specified landlord is therefore, preferably tenable.

4. As regards the contention that the landlord had not been shown to have rented out the building to the tenant and he was not been shown that he was entitled to receive the rent, learned Counsel pointed out that there was admittedly no deed of lease between the parties. The reliance of the landlord on

documents AW 6/B, AW 6/C and AW 6/D were shown to be not true by the tenant, who by examining an Expert is brought out that the alleged undertakings by tenant to pay rent to the landlord did not contain the signatures of the tenant and they were forged. The rejection of the Rent Controller of the evidence of the hand writing expert on the ground that the science of hand writing was not perfect and that an Expert who had been brought by the tenant to support his case could not be expected to give any evidence against the tenant. According to the learned Counsel the Rent Controller had made a point of inference that the tenant ought to be a tenant only under the person who had filed the petition instead of giving a definite finding that there were no records that established the case of tenancy between the petitioner and the respondent.

5. Learned Counsel for the respondent would counter these arguments by pointing out the documents purported to be undertakings to pay rent or the accounting entries of alleged receipts do not by themselves prove the tenancy, though they certainly were relevant. He particularly points out to the fact that the contention of the tenant was that he had been inducted into the possession of the property from the landlord's brother's widow Bimla Devi as a licensee authorized to be in possession without payment of rent. Thus, the Rent Controller found to be extraordinary artificial and not worthy of acceptance for it was inconceivable that a person who was stranger to a family could have been permitted to be in possession of a property for no rent. The Rent Controller also took note of the fact that neither Bimla Devi at whose instance the tenant was supposed to have been inducted nor any other person connected to be acquainted with the so called arrangement had been examined on the side of the respondent. One thing has to be observed that the tenant does not deny that the petitioner has come owner of the premises. If he does not claim exclusive title in himself but when he set up title under the person from whom he is alleged to have taken possession the only inference ought to be that he could be only a tenant and not a licensee. It cannot be believed that a stranger to the family would have been authorized to occupy a residential premises in a town, gratuitously. When the contention of the landlord itself is that there was no lease deed, it will be begging the question to expect documentary proof of such oral tenancy. It has to be essentially a matter of inferential finding, as given by the Rent Controller, which in my view, is quite logical and natural from the flow of events as narrated by the landlord.

6. The secondary argument as regards the tenancy was that the landlord himself had not referred in any way in the petition that he had let the premises in the year 1982 only after the tenant denied that there was any form of tenancy in his written statement, did the landlord join issues in the replication that the tenancy had been created at his instance some time in the year 1982. There was a further prevarication in the evidence that the lease was either in the year 1982 or 1983. This according to the learned Counsel for the petitioner, was a clear point to the fact that the plea of oral tenancy was an after thought and it ought to be rejected. This argument, again, in my view, does not come to any worthy

acceptance for, the landlord who claims himself to be a "specified landlord" and who seeks for an ejectment of his tenant could be expected to make reference to a lease deed if it had existed. If there was no document to state that the respondent was a tenant under him, no other details could be expected, especially when he was relying on some letters of undertaking purported to have been executed by the respondent. Only when the tenancy was denied in the written statement could there be a definite occasion for the landlord to state that the tenancy commenced in the year 1982. Perhaps it is a case of inadequate pleadings in the petition but that does not mean anything beyond that. The rent control petition requires no particular form of pleading and extracting standards of what should be set forth in the petition initially and how such contentions are raised are all matters that are best left to a judicial approach and when, by a proper line of reasoning, the Rent Controller had come to the conclusion that there was tenancy in favour of the tenant. I have no reason to adopt a different line of reasoning in revision.

7. The last contention that the property itself was not shown to be situate in an urban area is also in my view not correct. The petition has been described to be a property situate within the Municipal limits of the Phillaur for H. No. B-7/217. The Act is applicable u/s 1(2) of the East Punjab Urban Rent Restriction Act, 1949 to urban areas in Punjab and that is how it is precisely described in the petition. The Rent Controller has recorded the fact that the property was not known to be situate in a revenue area of Village Chawani but it was situate in the limits of Municipal Committee No. B-7/217 in the area of Civil Lines Phillaur. The property was assessed to house tax by the Municipal Committee, Phillaur Town. The contentions that it is not a "Urban Area" seems more a desperate defence than borne out of any legal conviction about the ten-ability of such defence in the light of the materials disclosed.

8. The Civil Revision is without merit and deserves to be dismissed. However, there shall be no directions as to costs.