(1992) 08 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2459 of 1991

Gurcharan Singh and Others APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Constitution of India, 1950 — Article 229(1)
Contract Act, 1872 — Section 2
East Punjab Urban Rent Restriction Act, 1949 — Section 13(2), 15

Citation : (1993) 103 PLR 67 : (1992) 2 RCR(Rent) 676

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : R.K. Handa, for the Appellant; N.S. Boparai, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This landlords revision petition against the order of the order of the appellate authority whereby the order of the Rent Controller was reversed, thus dismissing the eviction application.

2. The petitioners sough eyiction of the respondents from the ground floor of SCO No. 315-316/35B Chandigarh, on the ground of non payment of rent. In response to the notice issued by the Court the respondents put in appearance and filed written statement contesting the various grounds of ejectment. The stand taken by the respondents was that they had never agreed for the enhancement of rent as regards payment of rent. They claimed that the rent had already been paid. The precise stand of the respondents, as given in para No. 3 of the written statement, is hereunder reproduced as reference to the same will be made in subsequent part of the judgment. Para No. 5 of the written statement reads as under:-

"No arrear of rent is due as the rate at which the rent is being pad to the plaintiff is already in excess as per the decision of the Coordination Committee constituted by the Govt. for the purpose. The rent from 13.1987 to 28.2,1989 has been paid to the petitioners by bank draft Nos. OL/A/29-513458 dated 3.11. 1988, OL/A/29-514188 dated 15.12.1988, TT/A/88-545119 dated 30.12.1988 TT/ A/88-5464796 dated 31.3.1989 and TT/A/88-548457 dated 28.2.1989 through this Hon''ble Court "

3. The case set up by the petitioners was that the respondents agreed to the enhancement of rent to the extent of 25% per annum and so the rate of rent was Rs. 4850/-per month. Since this amount had not been paid or tendered, the respondents are liable to be vacated.

4. The rent controller came to the conclusion that there has been an agreement between the parties with regard to the enhancement of rent and since the same has not been paid or tendered decided this issue in favour of the petitioners. Resultantly, the order of eviction was passed against the respondents. Before the appellate Authority the matter was once again examined on facts and law The appellate authority, however, came to the conclusion that no such valid contract came into existence as alleged by the petitioners and so held that the rent of the premises in dispute remained at Rs. 3850/- per months As regards the payment of rent, the appellate authority observed that rent had been paid upto February. 1987 before the petition was filed and from 1.3. 1987 to 30.11.1988 amounting to Rs. 81690/- was tendered on 15.12.1988 on which date costs of the petition was also assessed. The appellate authority, however, found that the assessed cost of Rs. 500/- and the interest on the amount due was not tendered or paid by the respondents. But all the same, it came to the conclusion that since rent payable u/s 13 of the East Punjab Rent Restriction Act was upto July, 1988, rent paid for the months of August, September, October and November, 1988 had not become due and this way a sum of Rs. 15560/- was tendered in excess by the respondent-tenants. This way costs of Rs. 500/- and the amount of interest can easily be adjusted towards this excess payment Accordingly, the order of the Rent Controller was set aside and appeal was accepted as prayed for.

5. The petitioners have challenged the order of the appellate authority whereby the order of the Rene Controller was reversed on the ground that the appellate authority has erred in not properly perusing the documentary evidence on record by which it is proved beyond any manner of doubt that a fresh contract came into being between the parties and the rent of the premises in dispute stood increased from Rs. 3890/- to Rs. 4850/-. The counsel in this regard referred to the correspondence between the parties i e Exhibit P-3, P-4 and P-5, Vide Exhibit P-3 dated 22.6.83, a letter written by Gurjeet Singh to the Director, Police Telecommunications, Punjab, he sought a reasonable increase of rent and thus demanded that at least 30% of the rent may be increased. Exhibit P-4 is a copy of the memo dated April 20, 1987 from the Director General of Police, Punjab, Chandigarh to the Director, Police Telecommunications, Punjab, Chandigarh, asking as to whether the owner would be willing to accept 25% increase in the rent. It was further stated that this written consent may be obtained and sent to

this office for further necessary action. Exhibit P-5 is another letter addressed to the Director, Police Telecommunication, Punjab, whereby Gurjeet Singh, one of the owners, expressed his willingness to accept 25% increase in the rent. This letter is dated 5-5-1987. On these premises, the counsel stressed that the offer made vide communication Ex. P.4 was accepted by the petitioner as per Exhibit P-5, so a fresh contract between the parties came into existence. This way, the respondents on their own showing have neither paid nor tendered the rent at the agreed rate of Rs. 4850/-. The impugned order of the appellate authority is thus legally unsustainable. In the alternative the counsel urged that even if this contention of the petitioners is not accepted i e. with regard to the rate of rent yet the respondents did net tender the cost of the petition as well as the interest on the amount due and this way too tender/payment made by the respondents is per se short.

6. I have carefully considered the submissions made by the petitioners. There is an apparent fallacy in the reasoning of the counsel as regards the effect of issuing of letter Exhibit P-4 which has been taken to be an offer by the petitioners. A bare perusal of Exhibit P-4 clearly reveals that it is a communication between two separate departments i.e. this memo is from Director General of Police, Punjab, to the Director, Police of Telecommunications, Punjab, and all that it intends is as to find out if an increase of 25% in the rent will be acceptable to the landlord At best, it can be construed to be a communication asking the landlords to express their willingness so that necessary steps may be taken by the department. Even otherwise, if such an offer could be made by the State of Punjab alone who admittedly is not a party to this communication. The subsequent communication addressed by the petitioners to the department expressing their willingness to accept 25% increase in the rent is at best an offer. This being so, the same has not been accepted by the respondents before or till the filing of the present eviction petition. Thus, the rate of rent i.e. Rs. 4850/-cannot be said to be an agreed rent between the parties. The matter can be examined from another angle also. Admittedly, there is no written lease deed stipulating the rate of rent i.e. Rs. 4850/- per month. There is do averment in the application also that any such contract has been executed on behalf of the State of Punjab or by such person or persons who have been authorised to execute the same. This way there has been non compliance of Article 299(1) of the Constitution of India which envisages that, "all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President'' or the Governor by such persons and in such manner as he may direct or authorise." The Apex Court in the judgment reported as Seth Bikhraj Jaipuria Vs. Union of India (UOI), , examined a similar provision contained in the Govt. of India Act (1935) Section 175(3) and construing section 175(3) it held that, "it is clear that the Parliament intended in enacting the provision contained in Section

175(3) that the State should not be saddled with liability for unauthorised contracts and with that object provided that the contracts must show on their face that they are made on behalf of the State i.e., by the Head of the State and executed on his behalf and in the manner prescribed by the person authorised. The provision, it appears, is enacted in the public interest, and invest public servants with authority to bind the State by contractual obligations incurred for the purposes of the State." It further held that a person who seeks to contract with the government must be deemed to be fully aware of the statutory requirements as to the form in which the contract is to be made. In any event, inadvertance of an officer of the State executing a contract in manner violative of the express statutory provision, the other contracting party acquiescing in such violation out of ignorance or negligence will not justify the court in not giving effect the intention of the legislature, the provision having been made in the interest of the public. It further held that since the contract was not in the form as required by the Government of India Act, 1935, the same could not be enforced. Thus, I am of the view that no such new contract came into existence. The claim made by the petitioners on the basis of communication, Ex. P-4 cannot be construed as an offer which is stated to have been accepted vide Exhibit P-5. As regards the objection of the petitioners, since interest and costs as assessed by the Rent Controller, were neither paid nor tendered, has also no merit. The present petition was filed on 13.9.1988 and as per provision of Section 13 of the-East Punjab Rent Restriction Act, rent upto July, 1988, was recoverable However, the respondents tendered rent upto November, 1988 i.e. four months in excess than due. The total sum comes to Rs. 15560/-. The shortfall on account of costs of Rs. 300/- and interest can be adjusted towards this excess payment of Rs. 15560/-. This way there is no shortfall in the tendered amount. Thus, I find no merit in any of the contentions raised by the petitioners and consequently dismiss the revision petition. The parties bear their own costs.

